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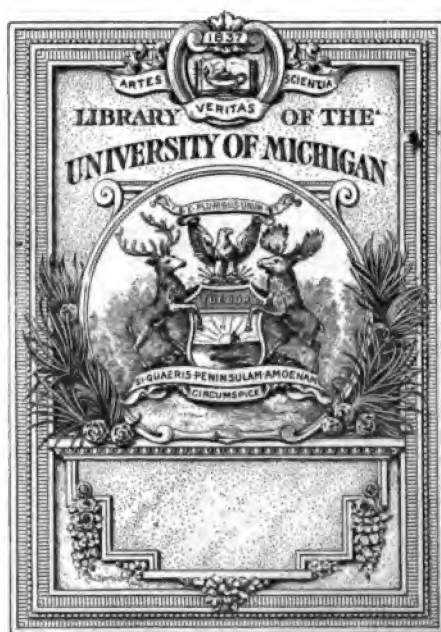
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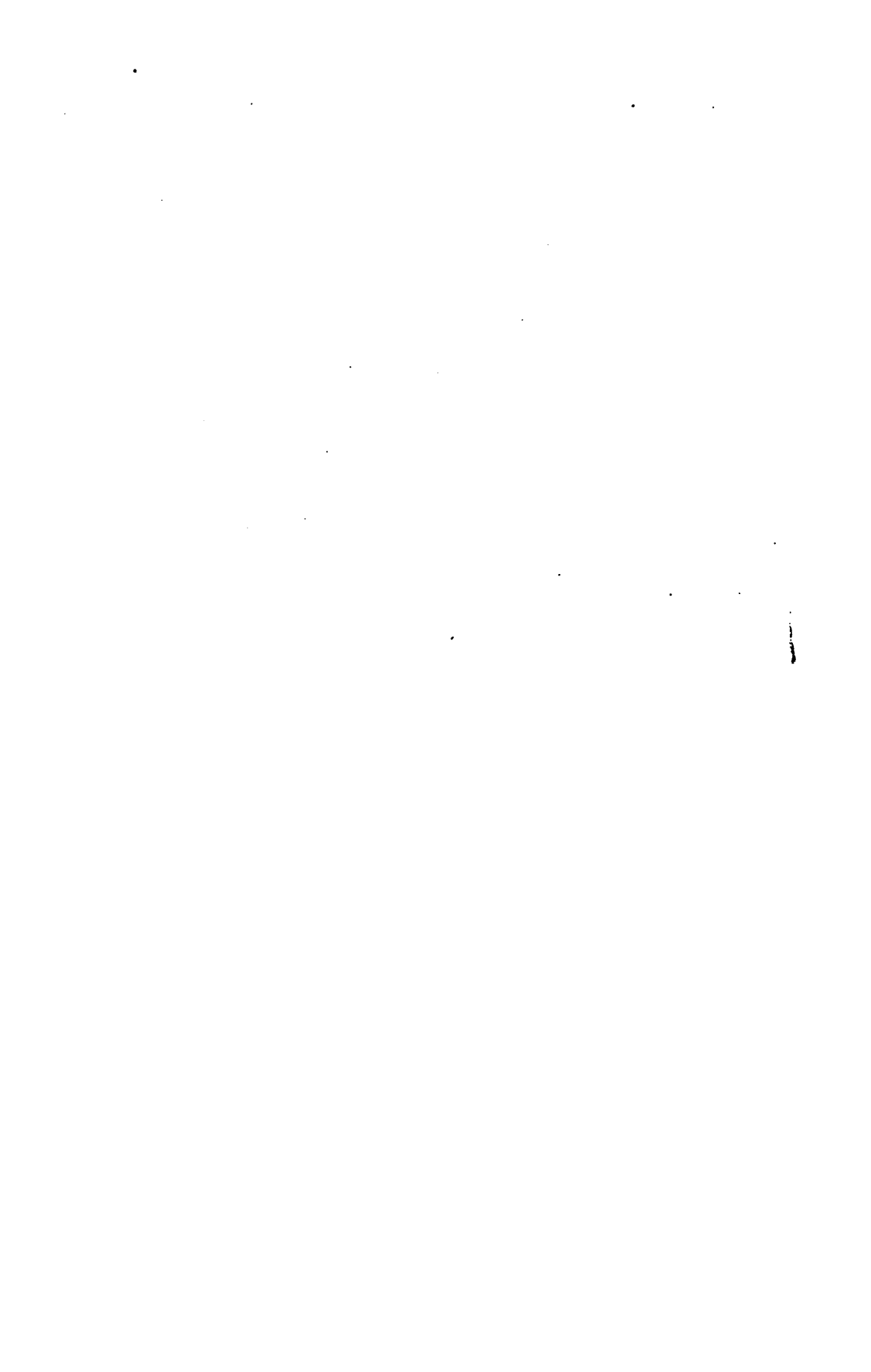
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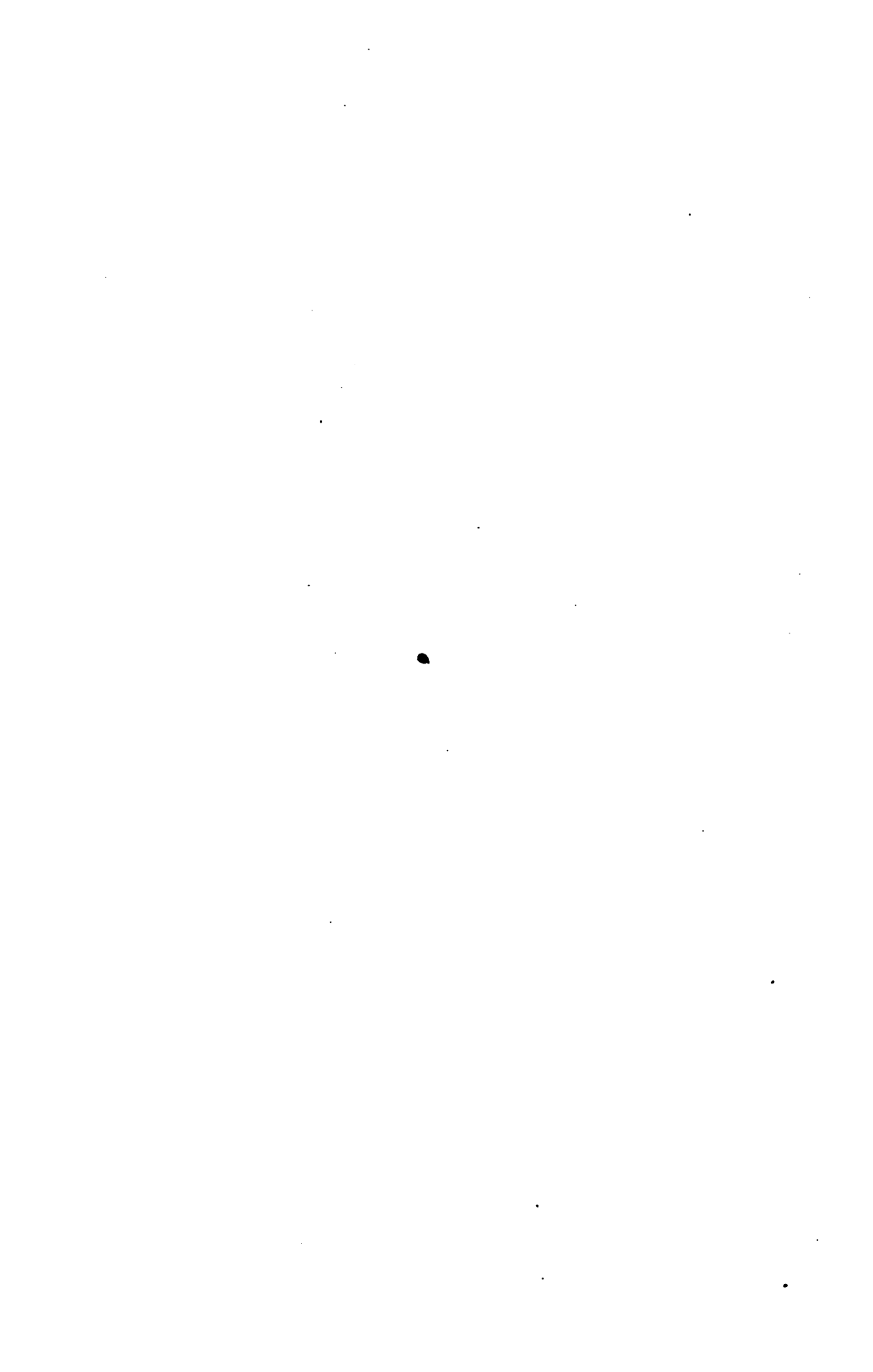












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VOLUME XIII

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OF THE UNITED STATES

DECEMBER, 1907, TO JUNE, 1908

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INTERSTATE COMMERCE COMMISSION.

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 1002.

MEMPHIS FREIGHT BUREAU

v.

FORT SMITH & WESTERN RAILROAD COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, AND ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY. TERRITORY OF OKLAHOMA, INTERVENER.

Submitted November 5, 1907. Decided December 9, 1907.

1. Complaint alleges unreasonable through rates on cotton seed from points on Fort Smith & Western Railroad to Memphis, Tenn. Class A rates then in force were admitted to be unreasonable, and defendant, by leave, amended its answer by stating that it had established through rates equal to the sums of the local rates of the several carriers, based on Fort Smith. Later, and before the case had been submitted, defendant Fort Smith and Western Railroad increased its local rates, and still later, and before decision had been rendered, filed a tariff of through rates carrying corresponding increases in rates.
2. Defendant Fort Smith & Western Railroad is a comparatively new road which runs through a comparatively undeveloped territory. It has been operated at a loss each year, and has not sufficient equipment to warrant it in permitting its cars to go off its line with through shipments. It declares that it is and has been willing to establish through route and joint rates to Memphis if it could have divisions of such rates equal to its local rates and could secure cars for such shipments from connecting carriers. It has secured concurrence from two connecting carriers in joint tariff which provides for loading in connecting carriers' cars.
3. A carrier's first and paramount duty to the shipping public is to make its entire equipment do its utmost in serving the shippers along its own line; a carrier serving and dependent upon a new and undeveloped territory, and unable to earn any profit for its owners, may charge higher rates than would be reasonable under different conditions, and if carrier that forms part of a through route proposes to require the transfer of freight from one car to another at any junction point it must specify in the tariff the point at which transfer will be made and the charge therefor.
4. The increases in the through rates made since defendant's amended answer to this complaint was filed are unreasonable and unjust. Through route and joint rates not in excess of the sums of the local rates which were in effect when such amended answer was made are ordered.

T. K. Riddick for complainant.

A. C. Dustin for Fort Smith & Western Railroad Company.

E. B. Peirce for St. Louis & San Francisco Railroad Company.

W. O. Cromwell for Territory of Oklahoma.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The complainant, a corporation composed of merchants and shippers of Memphis, Tenn., asks, in behalf of said merchants and shippers in the city of Memphis, relief against all the defendants as to alleged unjust and unreasonable rates on cotton seed from points of origin on the Fort Smith & Western Railroad to Memphis, and for relief against all defendants as to unjust, discriminatory, and unreasonable prejudice and disadvantage alleged to be suffered by complainant, its members, and the city of Memphis by reason of the exactions of the rates claimed to be unjust and unreasonable.

The relief asked is that the Commission establish as just and reasonable through rates on cotton seed in carloads from points on the Fort Smith & Western Railroad to Memphis, the through rates now published and in force on corn in carloads from the same points to Memphis.

All the defendants deny the existence of unjust and unreasonable rates on cotton seed or that any unjust, discriminatory or undue prejudice or disadvantage results to complainant, its members, or the city of Memphis by reason of the existing rates complained of.

The Territory of Oklahoma intervened through its attorney-general, by leave of the Commission, and joined in the complaint. No testimony was offered in behalf of said Territory, or of the defendants the St. Louis, Iron Mountain & Southern Railway Company and St. Louis & San Francisco Railroad Company, and the complainant, in its brief, says that the controversy is really one between the complainant and the Fort Smith & Western Railroad Company.

It appears that the complaint was filed at the instance of the Phoenix Oil Company, of Memphis, a corporation operating cotton mills at Memphis and surrounding towns.

No producer, shipper, or manufacturer, or other person from any point on the line of the Fort Smith & Western Railroad, or from any point in Oklahoma or Indian Territories, or the State of Arkansas, made complaint as to the rates in question or appeared to give evidence in support of the complaint, either in behalf of the complainant or intervener.

The rates complained of on cotton seed per 100 pounds, in carloads, from points on the Fort Smith & Western Railroad to Memphis and the rates on corn from same points to Memphis in force at the time of the filing of complaint were as follows:

Station.	Distance.	Rates in cents per 100 pounds.	
		Cotton seed.	Corn.
	<i>Miles.</i>		
Bokoshe, Ind. T.	324	47	17
Milton, Ind. T.	329	47	17
McCurran, Ind. T.	334	47	17
Krita, Ind. T.	346	47	17
Quinton, Ind. T.	359	47	17
Peatherstone, Ind. T.	367	47	17
Massey, Ind. T.	376	47	17
Crowder City, Ind. T.	380	47	17
Indianola, Ind. T.	388	49½	19
Garner, Ind. T.	393	49½	19
Hanna, Ind. T.	396	49½	19
Dustin, Ind. T.	406	49½	19
Okemah, Ind. T.	429	49½	20
Castle, Ind. T.	435	49½	20
Boley, Ind. T.	442	49½	20
Paden, Ind. T.	448	49½	20
Prague, Okla.	456	49½	20
Wilzetta, Okla.	462	58	20
Midlothian, Okla.	476	58	20
Warwick, Okla.	483	58	20
Fallis, Okla.	492	58	20
Meridian, Okla.	502	58	20
Guthrie, Okla.	514	58	20

No joint commodity rate on cotton seed in carload lots was in existence at the time of the filing of the complaint. The rates complained of as above set out are Class A rates under Western Classification, and shipments of cotton seed from points on the Fort Smith & Western Railroad to Memphis were governed thereby. These through class rates were higher than the combinations of the locals from the same points on the Fort Smith & Western Railroad, through Fort Smith, to Memphis over the lines of the other defendants.

The local rates on cotton seed, in car loads, from stations on the line of the Fort Smith & Western Railroad to Fort Smith, minimum weight 30,000 pounds, were, at the time of hearing, as follows (I. C. C., 201):

From—	Rate in cents per 100 pounds.
Bokoshe, Ind. T.	10
Milton to Garner, Ind. T., inclusive.	12
Hanna to Weleetka, Ind. T., inclusive.	13
Okemah to Dustin, Ind. T., inclusive.	14
Fallis to Guthrie, Okla., inclusive.	16

Other points on the line in the same groups with the stations above named took the same rates. The former local rates were uniformly 4 cents less per 100 pounds from these points and the other stations in the same groups, taking the same rates.

On July 2, 1907, after the testimony herein was taken, defendant Fort Smith & Western Railroad Company, by leave of the Commission I. C. C. Rep.

sion, amended its answer and stated that since the filing of its original answer it had withdrawn the Class A rates on cotton seed by Supplement 37 to I. & O. T. Tariff No. 1-H, I. C. C. No. 49, reading as follows:

Western Classification rating will not apply on shipments of cotton-seed car lots from stations on Fort Smith & Western Railroad to points covered by this tariff. Rates will be made on combinations of locals, but shipments will be accepted only when cars provided by the connecting carrier are available. If shipments are made in this company's cars, shippers will be required at their own risk and expense, subject to the usual demurrage charges, to unload or transfer same at junction points.

As a part of said amendment to answer, it further alleged that it had published and filed tariff, effective June 11, 1907, as follows:

On shipments of cotton seed originating at stations on the Fort Smith & Western Railroad on which freight charges have been paid at current tariff rates, a refund will be made to consignees of 4 cents per hundredweight for every 65 pounds of the product manufactured from cotton seed given the Fort Smith & Western Railroad for shipment outbound.

Original expense bills covering inbound shipments of cotton seed, together with statement of billing covering the outbound product to be forwarded to this office, at the close of each month, for which voucher will be made in favor of consignee direct. (See tariff I. C. C., 242.)

A carrier may properly offer lawful inducements to industries to locate upon its lines. It may not offer unlawful or discriminatory payments or privileges as such inducement, as is done in this rule. The rule and the practice which it provides are, in our opinion, unlawful.

Said amendment to answer further stated that, on May 20, 1907, the said defendant filed, effective June 22, 1907, I. C. C., 243, tariff on cotton seed in carloads from points of origin on its line to Memphis, Tenn., as follows:

Rates in cents per 100 pounds.

To Memphis, Tenn., from—	Rate.	To Memphis, Tenn., from—	Rate.	To Memphis, Tenn., from—	Rate.
Blooker, Ind. T.	29½	Hanna, Ind. T.	30½	Paden, Ind. T.	31½
Bokoshe, Ind. T.	27½	Indianola, Ind. T.	29½	Prague, Okla.	31½
Boley, Ind. T.	31½	Kinta, Ind. T.	29½	Quinton, Ind. T.	29½
Castle, Ind. T.	31½	Lequire, Ind. T.	29½	Shiloh, Okla.	33½
Crowder, Ind. T.	29½	McCurtaim, Ind. T.	29½	Sparks, Okla.	31½
Dustin, Ind. T.	30½	Massey, Ind. T.	29½	Warwick, Okla.	31½
Fallis, Okla.	33½	Meridian, Okla.	33½	Weleetka, Ind. T.	30½
Featherstone, Ind. T.	29½	Midlothian, Okla.	31½	Wellstone, Okla.	31½
Guthrie, Okla.	33½	Milton, Ind. T.	29½	Wilzetta, Okla.	31½
		Okemah, Ind. T.	31½		

Routing Instructions, via Fort Smith and St. L., I. M. & S. Ry., or via Fort Smith and St. L. & S. F. and C., R. I. & P. Rys.

Rates will apply only when loaded in cars furnished by the St. L., I. M. & S. Ry., C., R. I. & P. Ry., or St. L. & S. F. Rys.

If loaded in Ft. S. & W. R. R. cars, shippers will be required at their own risk and expense and subject to the usual demurrage charges, to unload or transfer same at Fort Smith, Arkansas.

This purports to be a joint tariff with the Chicago, Rock Island and Pacific Railway Company, the St. Louis, Iron Mountain and Southern Railway Company, and the St. Louis and San Francisco Railroad Company, and the rates therein named are combinations of the local rates of the Fort Smith and Western Railroad Company, then in force, from points on its line to Fort Smith, and the local rates on the lines of the other carriers named from Fort Smith to Memphis, the local rates between the last two points being 17½ cents per 100 pounds. The Chicago, Rock Island and Pacific Railway Company concurred in this tariff, but later canceled its concurrence, effective September 7, 1907. The other two carriers named as participants never concurred therein, so that no lawful through route via the defendants' lines with joint rates applicable thereto ever existed under said tariff.

On November 6, 1907, the Fort Smith and Western Railroad filed, effective December 7, 1907, its tariff I. C. C. No. 257, canceling its I. C. C. No. 243. This tariff, I. C. C. No. 257, purports to be a joint tariff with the other three carriers mentioned in said tariff I. C. C. No. 243. The Rock Island's concurrence in Fort Smith and Western's tariffs was, as stated, canceled on September 7, 1907. Concurrence in said tariff, I. C. C. No. 257, covering rates to Memphis, has been given by the St. Louis and San Francisco Railroad. Concurrence of St. Louis, Iron Mountain and Southern Railway applies only to rates to Little Rock. This tariff contains the same conditions as to furnishing cars and unloading at Fort Smith that have been herein quoted from I. C. C. No. 243. The rates, however, are from 1 to 3 cents higher per 100 pounds to Memphis than in tariff I. C. C. No. 243, due to the fact that the defendant, Fort Smith and Western Railroad, raised its local rates, effective on October 19, 1907, tariff I. C. C. 250, and reissue of same rates in tariff I. C. C. 258, effective December 23, 1907.

Complainant further contends that the through rates on cotton seed from the points on the Fort Smith & Western Railroad should be no higher than the rates on cotton seed to Memphis from points on the Chicago, Rock Island & Pacific Railway, which are similarly distanced from Memphis. Nothing appears in the testimony to indicate that conditions are the same at the towns on the Rock Island as at the corresponding towns on the Fort Smith & Western. There is much in the record to show that conditions are not at all similar, but differ widely as to the age and population of the towns, tonnage of the railroads, competitive conditions, development of the country, and conditions as to local markets.

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The rates on cotton-seed products from Fort Smith to Kansas City and St. Louis and from Fort Smith to Memphis, in carloads of 30,000 pounds, in cents per 100 pounds, are as follows:

Commodity.	Kansas City.	St. Louis.	Memphis.
Cotton-seed cake and meal	17	15	12
Cotton-seed hull and ashes, mixed or straight	17	13	10
Cotton-seed oil.....	16	17	12

The through rate on cotton-seed meal, in carloads, from Fort Smith to Boston is 35 cents per 100 pounds, and from Memphis to Boston is 28 cents per 100 pounds.

The Fort Smith & Western Railroad began operations in the fall of 1903. Its line is from Fort Smith, Ark., west to Guthrie, Okla., 217 miles. The first 20 miles from Fort Smith it uses the Kansas City Southern line under trackage contract, the terms of which forbid the defendant road from handling local traffic. From that point to the Oklahoma border the road passes through the Choctaw and Cherokee Indian lands, held by Indian allottees. There are no highways or bridges crossing the Indian lands and about 10 per cent of the land is under profitable cultivation. About 15 per cent of the Creek Nation land is under cultivation. Small towns at various points on the road have grown up and business in a small way has been created as a result of the building of the road. Two daily passenger trains are operated each way and one daily freight train each way.

The total freight tonnage handled from July, 1906, to February, 1907, approximates 240,000 tons, the greater part of which was coal and coke. For the year ending June 30, 1906, the total tonnage carried was 260,000 tons, of which 152,000 tons were coal and coke. All other commodities amounted to 107,000 tons. The total revenue from said 260,000 tons was \$327,449.03. Cotton seed and cotton-seed products produced \$76,000 of that amount.

With the exception of Fort Smith, Ark., and Guthrie, Okla., the towns on defendant line are but small country villages. Cotton is the principal agricultural product, although corn is grown in small quantities.

Defendant Fort Smith & Western Railroad Company's road cost approximately \$6,000,000 to build, exclusive of equipment costing about \$1,000,000. The outstanding bonds December 31, 1906, amounted to \$6,500,000, of which \$579,833.33 were unsold and in the treasury. These bonds in the treasury were used as collateral to bills payable of \$221,500, and equipment trust notes of \$366,435.44. The authorized bond issue of the company is \$7,500,000.

The said railroad, for the calendar years 1904, 1905, and 1906, was operated at a loss, not earning enough to pay operating expenses,

interest on bonds, bills payable, and car-trust certificates, said deficits being as follows:

1904.....	\$140,390.42
1905.....	70,839.66
1906.....	37,228.20

The deficit each year has been made up by the stockholders, who are also the holders of the bonds.

There are five oil mills on the line of the said defendant railroad—two at Fort Smith, two at Guthrie, and one at Weleetka. Another is in process of construction at Prague and will be in operation this fall. The capacity of these mills is much greater than the volume of cotton seed produced in the country tributary thereto. There are nine mills at Memphis.

The St. Louis, Iron Mountain & Southern Railway and the St. Louis & San Francisco Railroad enter Fort Smith. The Santa Fe, Rock Island, and M., K. & T. roads enter Guthrie, and by reason thereof all carload inbound business to these terminal points of the Fort Smith & Western is handled by these other roads, and defendant has no opportunity to get foreign cars for outbound business beyond its own line, except that at Crowder City, the M., K. & T. Railway delivers to it some inbound Fort Smith business. Last season it was obliged in numerous cases to transfer the contents of cars at Fort Smith at its own expense to connecting carriers' cars in order to keep its equipment on its own line, the connecting carrier often taking from ten to fifteen days to furnish cars. Last year the defendant had but 300 box cars and could not have handled the cotton seed offered from and to points on its own line if the oil mills thereon had not agreed to accept the seed in open coal cars. Its equipment last year in box cars and coal cars was inadequate for the needs of its own line. This year it will have 510 box cars, but it is estimated that the cotton production on its own line will exceed last year's production by from 10,000 to 15,000 bales, and the total number of box cars this year will not be more than adequate to handle its local traffic.

The defendant, Fort Smith & Western Railroad Company, declares that it has at all times been ready to put in effect through rates on cotton seed to Memphis, if it could get its local rates from points on its line to Fort Smith, as its share of the through rates, and be protected in equipment on its own line by getting foreign cars for such outbound through shipments. Mr. J. S. Davant, secretary of the complainant, testified that in the division of joint rates from points on the line of the Fort Smith & Western Railroad to Memphis said defendant ought to have the equivalent of its local rates from same points to Fort Smith.

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No testimony was offered to show any relationship between the rates on corn and on cotton seed; but the defendants testify that the two rates have no reference or relation to each other, and that neither commodity is considered in fixing the rate on the other; that, further, corn is a commodity that moves during the greater part of the year, while cotton seed moves during only a small portion of the year.

A carrier can not establish a through route and joint rate except under concurrence of the other carriers that form parts of such route. Nor can its joint tariff impose upon a connecting carrier any duty, the performance of which can not be compelled by a shipper. In the absence of agreement no connecting carrier is obliged to furnish cars to take shipments from points of origin on another carrier's line, but by their concurrences in the tariff now discussed the defendant connecting carriers obligate themselves to furnish cars for through shipments from points on the line of the Fort Smith & Western Railroad.

The tariffs of the Fort Smith & Western Railroad now under discussion provide—

If loaded in Fort Smith & Western Railroad cars shippers will be required at their own risk and expense, and subject to the usual demurrage charges, to unload or transfer same at Fort Smith, Ark.

This condition, in effect, would destroy the through route that is established by the tariff. It would break the continuous service that is essential in carrying over the through route. A through route is a continuous line formed by agreement, express or implied, between connecting carriers, over which shipments are to be made, and all services in connection therewith from origin to destination must be performed by said carriers at their lawfully established rates applicable thereto. The service must be continuous for every part of the journey over the continuous line. When a through route is established the shipper should not be called upon at any point therein to assume possession or control of his shipment or to do any service in forwarding it to its final destination as the tariff provision mentioned would require.

We are not to be understood as saying that a carrier may not, in its tariffs, impose this condition when no through route has been formed. A carrier's first and paramount duty to the shipping public is to make its entire equipment do its utmost in serving the shippers along its own line. Neither do we say that carriers may not, in establishing a through route, provide in the tariffs for unloading and transferring at stated junction points as a part of the through service, if said tariffs also specify the kind of service required in transferring at such points and the separate rates and charges to be exacted therefor. Such separate charges must, of course, be reasonable and just.

The tariff condition referred to would likewise prevent a lawful application of the rates named in the tariff. Under it the rates would not be specific, definite, and certain at all times and in all cases. The separate rates, fares, and charges specified would not be applicable in every case to every shipper. The shipper procuring a foreign car from a connecting carrier for loading at a point on the Fort Smith & Western would have an advantage over the shipper using a Fort Smith & Western car to the extent of the cost of unloading and transferring at Fort Smith. The regulation would permit a shifting rate upon the happening of a contingency, and under it unjust discrimination and undue prejudice and advantage would arise, even in the exercise of the utmost good faith. Every service offered and charged for in the transportation of property must have its rate in the tariffs to make lawful the exaction of a charge for such service. When a service has been provided and a rate established therefor, that service must be performed alike for all persons on all occasions and the established rate therefor must be exacted. The tariff provision referred to does not have the sanction of the law.

The rates on cotton-seed products are practically the same from Memphis to Kansas City as they are from Fort Smith to Kansas City. From Memphis to St. Louis these rates are considerably lower than from Fort Smith. The rate from Memphis to Boston on said products is 7 cents per 100 pounds lower than from Fort Smith. The prices paid the producers for cotton seed at points on the Fort Smith & Western are substantially the same as the prices paid therefor in Memphis.

The record does not show that the local rates on cotton seed from points on the Fort Smith & Western Railroad to Fort Smith which were in force when testimony in this case was taken, or the local rates thereon from Fort Smith to Memphis over the lines of the other defendants are, under existing circumstances and conditions, unjust or unreasonable. No showing is made upon which the Commission could prescribe as just and reasonable through joint rates less than the combinations of such locals. The joint rate on corn established by the defendants does not in this case fix a standard for a joint rate on cotton seed.

The claim that the joint rates on cotton seed from points on the Fort Smith & Western Railroad to Memphis should be no higher than the local rates thereon from points on the Chicago, Rock Island & Pacific Railway of similar distances from Memphis is not established by the evidence. A carrier serving and dependent upon a new and undeveloped territory, and unable to earn any profit for its owners may charge higher rates than would be reasonable under different conditions.

A through route and joint rates are now in existence from points of origin on the line of the Fort Smith & Western Railroad over the lines
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of the other defendants to Memphis and to Little Rock, Ark., the tariff governing which provides that the connecting carriers shall furnish the cars for through shipments from points of origin. (Tariff, I. C. C. No. 257.)

This tariff names joint through rates to Memphis that are in excess of the combinations of local rates based on Fort Smith which were in force when this complaint was filed, due to the several changes in tariffs and the increases in rates which have been made since that time and while complaint was in course of adjudication; and to the extent to which such joint rates exceed such combinations of locals they are unreasonable and unjust.

The defendant, the Fort Smith & Western Railroad, should be required to cancel its said tariff (I. C. C. No. 257) and to issue in lieu thereof, and effective on date of said cancellation, a joint tariff naming through rates from points on the Fort Smith & Western Railroad to Memphis via the lines of the carriers that have lawfully concurred in said tariff, not exceeding the sums of the local rates of the Fort Smith & Western Railroad from points of origin to Fort Smith which were in effect prior to October 19, 1907, and of the connecting carriers from Fort Smith to Memphis. An order should be entered accordingly.

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No. 1266.

THE TRAFFIC BUREAU, MERCHANTS' EXCHANGE OF
ST. LOUIS,

v.

MISSOURI PACIFIC RAILWAY COMPANY AND ST. LOUIS,
IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Submitted December 14, 1907. Decided December 16, 1907.

Rates exacted by defendants for transporting grain and products thereof from St. Louis, Mo., to Little Rock, Ark., namely, a rate of 18 cents per 100 pounds on wheat and its products and a rate of 15 cents per 100 pounds on other kinds of grain, known as coarse grains, including corn and oats, and the products of such coarse grains, declared unlawful, so far as applied to such transportation after said traffic has been carried to St. Louis by railroad from points outside that city, and defendants required to reduce the former rate to the extent of 5 cents and the latter to the extent of 4 cents.

J. C. Lincoln for complainant.

Alexander G. Cochran for defendants.

H. G. Wilson for Kansas City Transportation Bureau, Intervener.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint, which is brought by the Traffic Bureau, Merchants' Exchange of St. Louis, in the interest of grain shippers doing business in that city, puts in issue rates on grain from St. Louis to Little Rock and various Arkansas points, as compared with similar rates from Kansas City and other Missouri River points. No question is made as to the jurisdiction of the Commission over the defendants or the rates in controversy.

Grain handled in St. Louis is grown in Illinois, Missouri, Iowa, and in territory west of the Missouri River, mainly Kansas and Nebraska. Very little comes from Illinois. More is obtained from Iowa and Missouri; but it was said that 75 per cent of the wheat, corn, and oats dealt in upon the St. Louis market was grown west of the Missouri River.

Rates from points west of the Missouri River to St. Louis are made by adding to the locals from the points of origin up to the river a proportional rate from the river to St. Louis, which at the present time is 9 cents per 100 pounds on wheat and 8 cents per 100 pounds on coarse grains. All grain obtained from this territory, therefore, costs the St. Louis merchant more, by the amount of these arbitraries, than it costs the dealer located at some Missouri River point. Grain grown in Iowa and Missouri may reach Kansas City and St. Louis at the same or different rates, according to the locality in which it is produced, and the rate here may be less to St. Louis than to Kansas City.

Rates from St. Louis and Kansas City to Little Rock and other Arkansas territory in question are the same, being at the present time 18 cents per 100 pounds on wheat and 15 cents per 100 pounds on coarse grains. Omaha takes a differential 3 cents above Kansas City, thus producing a rate of 21 cents on wheat and 18 cents on coarse grains. These rates from Missouri River points are proportional rates and less than the locals from the same points; the rates from St. Louis are the regular locals.

The territory in question is sometimes spoken of as Little Rock territory and sometimes as Arkansas territory. The distance from St. Louis to Little Rock is 345 miles via the lines of the defendants; from Kansas City, 504 miles via the short line. The difference in favor of St. Louis seems to be greater in case of other portions of this territory. For instance, Knobel is 198 miles from St. Louis and 479 miles from Kansas City. It was said that the average distance from Kansas City was 480 miles and from St. Louis 277 miles.

The distance from a point west of the Missouri River to a point in Arkansas territory would, in all cases, be greater via St. Louis than via Kansas City, and sometimes this difference would be equal to the entire distance between Kansas City and St. Louis. The Missouri Pacific Railway has in effect what it terms "out-of-line" rates, under which traffic may be diverted to roundabout routes upon payment of a specified sum above its regular rate, according to the increased distance. It appeared in testimony that this company reckoned the difference in distance by its line via St. Louis from many points upon the Missouri Pacific west of the Missouri River at 170 miles, and that the out-of-line addition for this added haul was 3 cents per 100 pounds, so that traffic may now be transported from points on the Missouri Pacific through St. Louis to Little Rock territory by paying 3 cents above the rate by the direct line, which direct-line rate would ordinarily be the same as via Kansas City.

Grain merchants at St. Louis seem formerly to have done considerable business in this territory, but within the last few years have

found themselves unable to sell there. Conceiving that this was due to the adjustment of rates, and that their position entitled them to a better rate than Kansas City, they applied to the defendants, who, acting upon this request, filed with the Commission, in the winter of 1906, a tariff naming proportional rates from St. Louis of 11 cents per 100 pounds on wheat and 9 cents per 100 pounds on corn and oats. The filing of this tariff created a storm of protest from various quarters, notably Kansas City, and the defendants withdrew the tariff as soon as possible after it became effective.

It being evident that other localities, notably Kansas City, were interested in the disposition of this question, this investigation was set down for hearing at that point, upon notice to the commissioner of the transportation bureau of the Commercial Club of Kansas City, who appeared, made a full statement of the position of the interests which he represented, produced testimony, and filed a brief. The grain interests of Omaha were also notified, but have not seen fit to intervene. The Little Rock Board of Trade has filed a statement setting forth its position. In disposing of the case the claims of all these conflicting interests have been considered.

If this case were to be decided without any reference whatever to competitive conditions at St. Louis and Kansas City, it is clear that rates from St. Louis, by virtue of its greater proximity to Little Rock and Arkansas points, ought to be less than the rate from Kansas City.

If the competitive conditions which do exist are to control, then these rates ought all the more to be less from St. Louis, since these two markets, deriving their supplies largely from the same source, compete in this territory and therefore rates via the several lines from points of origin to final destination ought to be substantially the same. At the present time the rate is in many cases against the St. Louis merchant by the full local from St. Louis to Kansas City.

We are of the opinion, therefore, that upon any view of this matter these rates from St. Louis should be less than from Kansas City and other Missouri River points. We think, however, that the rates formerly established by the Missouri Pacific from St. Louis were lower in proportion to those from Kansas City than they justly ought to have been.

The Missouri Pacific ought not, perhaps, to be required to make the same rate via St. Louis, through the application of a proportional rate from St. Louis, which can be obtained by taking advantage of its out-of-line rate, since, in the latter case, that company enjoys the transportation for the entire distance over its own line, while in case of the proportional rate the grain may be brought to St. Louis by some other line.

Leaving the interest of that company entirely out of consideration, it must still be remembered that a considerable quantity of grain comes from sections east of the Missouri River, from which rates are not, on the average, much, if any, higher to St. Louis than to Kansas City, and may be actually lower, and also that by virtue of the fact that the proportional rate is the same from all Missouri River points to St. Louis, that market may own grain grown west of the Missouri River at a disadvantage which, as compared with Kansas City, is less than the full proportional rate. For example, if the grain originates at a point in Nebraska from which the rate is 6 cents to Omaha and 10 cents to Kansas City, the St. Louis merchant pays 15 cents for the transportation, as against 10 cents by the Kansas City dealer, producing a difference against St. Louis, not of 9 cents, but of 5 cents.

On the whole, we are of the opinion that rates 5 cents per 100 pounds lower on wheat and 4 cents per 100 pounds lower on corn and other coarse grains would be reasonable. This would produce a proportional rate from St. Louis of 13 cents per 100 pounds upon wheat and 11 cents per 100 pounds upon corn and other coarse grains. Apparently, although this was not gone into upon the hearing, the products of grain take the same rates into this territory as the grain itself, and the rates upon flour, corn meal, and other grain products should be correspondingly reduced from St. Louis.

We are also of the opinion that the present rates from St. Louis are unjust and unreasonable, and that the above rates, considered in and of themselves as proportional rates, would be just and reasonable, without special reference to competitive conditions at the Missouri River, and that they ought not to be exceeded for the future.

Little Rock contends that these rates from St. Louis ought not to be reduced because the merchants of that city have provided elevators for the handling of this grain directly from the field to customers in Arkansas territory. It states that the distance is much less from points of production west of the Missouri River by the direct line to Little Rock than it is via St. Louis.

This is undoubtedly correct, and upon the basis of the rates above suggested the combination via St. Louis will still be materially higher than via the direct line from the country station. Both Little Rock and St. Louis are entitled to a fair and reasonable rate and to do whatever business can be done upon such an adjustment. In our opinion the rates above suggested are fair to St. Louis; if those from the field to Little Rock are too high, they can be reduced after investigation by this Commission.

The territory in question was not very accurately defined upon the hearing, nor is it certain that exactly the same changes ought to be

applied in all portions of that territory. We shall accordingly treat Little Rock, Ark., as typical of the whole territory and issue an order applicable to that point alone, relying upon the defendants to readjust the balance of their rates in accordance with the views herein expressed. If that adjustment is not satisfactory to the complainants, the matter can be again brought to our attention either by further proceedings under this complaint or by the filing of a new complaint.

It should be noted that no opinion is expressed upon the differential of 3 cents taken by Omaha above Kansas City into this territory, nor upon the reasonableness of applying the same proportional rate from all points upon the Missouri River to St. Louis, both of which matters were referred to by the Kansas City interests upon the hearing there, and have been again forcibly called to our attention in the brief filed by those interested.

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No. 1268.

HOLCOMB-HAYES COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY AND SOUTHERN RAILWAY COMPANY.

Submitted October 28, 1907. Decided December 9, 1907.

1. The Commission does not approve the practice whereby a carrier puts in rates with a clause under which they expire after a short time, for the purpose of enabling the Commission to do justice in a particular case. In order to prevent the discriminations which the act was intended to defeat, the Commission, in such cases, will hereafter require the rates to remain in effect for a definite period of time to be designated in the order.
2. Complainant is entitled to recover from defendants the sum of \$3,071.56, as reparation for unjust and unreasonable charges on specified shipments of cross-ties made under the rates complained of in this case.

Charles L. Allen for complainant.

J. M. Dickinson, Ed. Baxter and *Blewett Lee* for Illinois Central Railroad Company.

Ed. Baxter and *C. B. Northrop* for Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

On the 1st day of December, 1905, the Tennessee Central Railroad, extending from Harriman Junction, Tenn., on the east, through Nashville to Hopkinsville, Ky., on the west, ceased to be operated as a separate and independent road, and was turned over under lease to the Illinois Central Railroad Company and to the Southern Railway Company, the former taking possession of that part of the line that lies west of Nashville, which is now known as the Nashville Division of the Illinois Central Railroad Company, while the Southern Railroad Company assumed control of that part that lies east of Nashville and is now known as the Nashville Division of the Southern Railway. This action was followed a few days later by a general notice canceling all through tariffs formerly in effect over the road whose separate existence was thus terminated.

When this occurred the complainant was engaged in filling a contract for the delivery of a large number of railroad cross-ties at Pawnee Junction, Bloomington, and Paxton, in the State of Illinois. Arrangements had been made for shipping the ties from points on the line of the Tennessee Central Railroad both east and west of Nashville. In view of certain provisions in the contract, the complainant could not delay the shipments without subjecting itself to a financial loss; and instead of waiting for a readjustment of rates to those destinations from the points in question, it was thought best to send the shipments forward under such rates as might still remain in effect. The shipments began to move during the latter part of November, 1905, and continued until February 6, 1906. From points on the new Nashville Division of the Illinois Central Railroad—that is to say, from points on the old Tennessee Central Railroad west of Nashville—2,431 cross-ties were shipped to Illinois destinations in 6 carloads; of these 1,000 ties in 2 carloads were billed to Bloomington and 1,431 ties in 4 carloads were forwarded to Pawnee Junction. From points on the new Nashville Division of the Southern Railway—that is to say, from points east of Nashville—the complainant forwarded 8,711 cross-ties in 28 carloads to Pawnee Junction and 9,155 cross-ties in 26 carloads to Paxton.

The complainant alleges in its petition, which was filed on August 27, 1907, that the rates actually collected upon these shipments were unlawful in that they were excessive and unreasonable in amount. The record shows that on the 1,000 cross-ties shipped to Bloomington from points west of Nashville freight charges aggregating \$200 were actually collected, being at the rate of 20 cents per tie. The complainant avers that the charges ought not to have exceeded $16\frac{1}{2}$ cents per tie. On the 4 carloads containing 1,431 cross-ties shipped from the same points to Pawnee Junction the defendants collected \$257.58, being at the rate of 18 cents per tie. The complainant now insists that charges should have been collected on the latter shipments at a rate not exceeding $14\frac{1}{2}$ cents per tie. On the 8,711 cross-ties shipped from points east of Nashville to Pawnee Junction the total rate actually collected appears to have been an average of 37.9 cents per tie. On the 9,155 cross-ties shipped from the same points of origin to Paxton freight charges were collected at rates from the various points of origin that average 35.58 cents per tie. It is to be inferred from the whole record that the rates actually collected were an overcharge; at any rate, an examination of the tariffs on file with the Commission reveals no basis for such average charges per tie. The complainant now insists that a reasonable rate on the shipments from points east of Nashville would not have exceeded $19\frac{1}{2}$ cents per tie. Its contention is based upon the allegation that shortly after these several shipments were made and the freight charges collected, as respec-

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tively indicated above, the rates were reduced by the defendants to the amounts mentioned in the complaint as the rates that ought to have been charged and collected. The prayer of the complainant is that reparation, amounting in the aggregate to the sum of \$3,159.58, be awarded to the complainant on these shipments, that amount being the difference between the rates actually collected and the rates which the complainant alleges were subsequently put in effect by the defendants and are now in force, although, as will hereafter appear, they were not in effect for a long intermediate period.

When the case was called for hearing, counsel for the respective defendants admitted that the exhibits attached to the complaint correctly set forth the details with reference to all the shipments referred to in the complaint, and that they properly state the amount of freight charges actually collected. They also admitted, upon an examination of the whole situation, that the complaint was well founded. Upon stipulation and leave given, the defendants therefore withdrew their respective answers and submitted the cause to the Commission upon the complaint and exhibits attached thereto and upon the testimony of Mr. Holcomb, which was then taken. During the course of the hearing it was discovered that the rates of the defendant, the Illinois Central Railroad Company, from points on its new Nashville division to the destinations in question had not been changed since the date of the shipments. In the absence, therefore, of testimony showing the unreasonableness of those rates, there was no basis upon which the Commission might enter an order for reparation. For this reason the complainant withdrew its claim for reparation on the 6 carloads containing 2,431 cross-ties that moved from points west of Nashville. As to the 17,866 cross-ties in 54 carloads that moved to the destinations mentioned from points east of Nashville, it was understood at the hearing that reparation might be awarded on the basis of the lower through rate of 19½ cents, which was established by the defendants from those points shortly after the shipments moved, by a tariff effective February 2, 1906. It was stated by counsel on the hearing that this through rate was still in effect. But upon subsequent investigation of the tariff schedules on file in the office of the Commission the fact was disclosed that the tariff naming this joint through rate was canceled in June, 1906, since which time no through rate had been in existence between the points in question. This condition of the tariffs was called to the attention of the officers of the Southern Railway Company. And by a tariff duly published and filed with the Commission, effective November 28, 1907, that company and the Illinois Central Railroad Company have now reestablished the joint through rate of 19½ cents per cross-tie between the points in question, with a carload minimum of 250 ties.

The rates actually applied to the movements in question seem not to have been lawfully applicable on railroad cross-ties; and in that sense the rates collected from the complainant on its shipments of cross-ties from points east of Nashville to the destinations in question were unlawful. The rates collected were also unlawful in the sense that they were excessive in amount and ought not to have exceeded $19\frac{1}{2}$ cents per cross-tie. On the basis of the latter rate, since put in effect as stated, the defendants are authorized and directed to make reparation to the claimant in the sum of \$3,071.56. In arriving at this amount instead of \$3,074.49, we have taken into consideration the fact that two carloads shipped to Pawnee Junction, as shown in the exhibit attached to the petition, did not contain the minimum carload number of ties, thus necessitating a reduction of the amount by \$2.93.

An examination of the tariff records of the Commission discloses the fact that the rate of $19\frac{1}{2}$ cents, made effective by the defendants on November 28, 1907, as heretofore stated, expires according to its terms on January 1, 1908. The defendants seem to have put that rate in effect on the theory that justice to the complainant required them to establish it, and thus give the Commission a basis for granting relief in this case. It is proper to say in this connection that we do not approve the practice, apparently of quite recent origin, of putting a special rate in effect simply for the purpose of enabling the Commission to do justice in a particular case, and with a clause in the tariff under which, after remaining in force for a period of say thirty days, during which time the Commission will ordinarily enter its relief order, the rate will expire. In such cases, whether they arise on formal or informal pleadings, we shall, in order to prevent the discriminations which the act was intended to defeat, require the rate to remain in effect as a maximum for a definite period of time to be designated in the final order. And we understand that the defendants, whose attention has been called to the matter, make no objection to the entry of an order in the case requiring them to maintain a rate not exceeding $19\frac{1}{2}$ cents for a period of not less than one year.

An order will be entered in accordance herewith.

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No. 1010.

CHICAGO & MILWAUKEE ELECTRIC RAILROAD
COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY; THE YAZOO
& MISSISSIPPI VALLEY RAILROAD COMPANY; ELGIN,
JOLIET & EASTERN RAILWAY COMPANY, AND CHI-
CAGO & NORTHWESTERN RAILWAY COMPANY.

Submitted July 18, 1907. Decided December 2, 1907.

1. Complainant demands through routes and general class and commodity rates on movements in both directions between points on its own line and points on the lines of the defendants, but it appeared from the record in the case that the shipping community described therein was already supplied with a reasonable or satisfactory through route. For this reason the complaint should be dismissed.
2. The proviso in section 15 of the amended law limiting the power of the Commission to establish through routes and joint rates to cases where "no reasonable or satisfactory through route exists" was not intended to afford a means by which new lines, with the aid of the Commission, may profitably force their way into shipping districts built up and already well served by older lines, and thus seize and divide with the latter such traffic as may be offered for movement. The purpose of the clause was to afford relief to shipping communities and not to aid carriers to acquire strategic advantages in their contests with one another.
3. The act makes no distinction between railroads that are operated by electricity and those that use steam locomotives; both are subject to the act when engaged in interstate transportation and are entitled to equal consideration in any controversy before the Commission.

Fayette S. Munro for complainant.

J. M. Dickinson and *Blewett Lee* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

Samuel A. Lynde for Chicago & Northwestern Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This is an application under section 15 for the establishment of through routes and joint rates. The complainant demands through

routes and general class and commodity rates on movements in both directions between points on its own line and points on the lines of the defendants, the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company, which latter road is owned and controlled by the first-named defendant and is a part of its system. Notwithstanding the fact that the issue, as made on the pleadings, covers all points on the lines of both companies and calls for joint through rates on general traffic, the testimony on the hearing was directed solely to the need of the complainant for an outlet to southern markets for the cabbage product of that part of southern Wisconsin through which its line passes and which seems to be devoted largely, if not exclusively, to the production of cabbages. The special district, described in the complainant's testimony, is in the neighborhood of two sidings, known as Piper's Siding and Hanche's Siding, which have been constructed by the complainant on the cabbage farms of two shippers bearing those names who appeared in the case as witnesses for the complainant. It is from these two sidings that the through routes and joint rates are more especially desired.

The application is contested by the principal defendants, as well as by the Chicago & Northwestern Railway Company, which, on the stipulation of the parties, intervened after the hearing and became a party defendant, on the ground that the cabbage district in question is already served by reasonable and satisfactory through routes.

The record discloses the following facts: The tracks of the complainant from Evanston to North Chicago, in the State of Illinois, run substantially parallel to and almost in sight of the shores of Lake Michigan. They lie immediately east of the tracks of the Wisconsin division of the Chicago & Northwestern Railway Company. In the suburban communities through which both roads pass, and at a few other points, the complainant's line diverges for short distances to the east in order to take advantage of the established highways in those communities or to pass around buildings or other local obstructions. But the respective rights of way of the two companies for the greater part of the distance to North Chicago are separated by a wire fence only.

At North Chicago the tracks of the complainant cross to the west of the right of way of the Chicago & Northwestern Railway Company; and from that point to the terminus of the line of the complainant, a few miles north of Racine, the two rights of way are more widely separated; but at no point does the distance between them exceed 3 miles. Moreover, the mean distance of the complainant's right of way from the main line of the Chicago, Milwaukee & St. Paul Rail-

way Company, which lies to the west of the complainant's tracks, does not exceed $4\frac{1}{2}$ miles. Piper's Siding, one of the points from which through routes to southern markets are desired, is only about 1 mile from the siding of the Chicago & Northwestern Railway at Berryville. Hanche's Siding is from $1\frac{1}{2}$ to 2 miles from the receiving station of the Northwestern at the same point. This latter siding on the complainant's line is only three-quarters of a mile from an extensive siding of the Northwestern at Chicory.

Although it does some local freight business between Evanston and Lake Bluff, the principal traffic enjoyed by the complainant between those points is such as pertains to any interurban street car company. But from Lake Bluff the petitioner has constructed a branch line to Rockefeller, which affords it a larger opportunity for conducting a general freight traffic. This branch road runs substantially due west through Rondout and Libertyville to Rockefeller, and is $8\frac{1}{2}$ miles in length. At Rondout it crosses and has a physical connection with the main line of the Chicago, Milwaukee & St. Paul Railway Company. Immediately west of Rondout the petitioner also has a junction with the Elgin, Joliet & Eastern Railway, which is locally known as the "Outer Belt Line," the principal business of which is the interchanging of traffic for and between the great carriers entering Chicago. At Rockefeller the branch line of the complainant connects also with the tracks of the Wisconsin Central Railway.

It is over this branch line to Rockefeller, and via the Outer Belt Line to the Illinois Central Railroad, that the complainant desires an outlet for cabbages to southern markets. The branch line from Rockefeller to Lake Bluff and the main line from Lake Bluff to the cabbage district in question together form a continuous line of double tracks about 39 miles in length. The tracks are laid with 80-pound rails and are well ballasted. The culverts and bridges are constructed of re-enforced concrete. The record fully discloses and the defendants admit that so far as construction is concerned the complainant is able not only to handle freight in carloads but in trains. At the time of the hearing its motive power and car equipment consisted, in addition to the usual electric motors and interurban passenger cars, of nine steam locomotives, three 50,000-pound box cars, eight 60,000-pound flat cars, and twenty-four convertible gondola cars. While most of this equipment has been in use by the complainant for its own construction work, it is available for freight traffic and has been used to some extent for that purpose. Additional equipment, including three steam locomotives, has been ordered and is now being delivered. The complainant has no refrigerator cars, although cabbages are customarily moved in cars of that kind. Its traffic manager frankly stated on the hearing that if the desired through

routes were ordered by the Commission, the complainant would have to look to the Illinois Central to supply the necessary cars for the cabbage movements; and that it is a general understanding and custom among carriers that the line having the longer haul will supply cars for movements over through routes. He also explained that it would be impossible for a short line like his own to equip itself with sufficient refrigerator cars for the traffic in question.

The complainant has through routes and joint rates in effect with the Wisconsin Central Railroad Company. And for a period of one month and seventeen days through routes and joint rates to the markets in question were in effect under a joint tariff filed by the complainant and the Illinois Central Railroad Company. Several carloads of cabbages were moved over the through routes and under the joint rates thus established. But the Illinois Central Railroad Company soon canceled the tariff because, as claimed by the complainant, objection had been made to it by the Chicago & Northwestern Railway Company. Officials of the Illinois Central Railroad Company, who testified on the hearing, stated that the joint tariff was canceled because it had proved unsatisfactory; that the complainant had no car equipment of its own, and that the Illinois Central, being short of cars, was disinclined to give its own equipment to roads that could not reciprocate.

The fact that the complainant has no refrigerator cars of its own in which to move this commodity, if the through routes desired are established by the Commission, is not only admitted by the petitioner, as heretofore indicated, but it also admits that the Illinois Central Railroad Company "has the right to refuse to supply empty cars to its connecting lines." And it confesses that the Commission would be unwarranted in compelling the establishment of joint rates and through routes unless the Illinois Central Railroad Company will voluntarily supply the necessary cars after the routes and rates have been established, or unless the complainant, as a matter of law, can compel it to do so. The record indicates the unwillingness of that defendant to supply the required empty cars to the complainant. And the complainant meets that situation by maintaining that after the through routes and joint rates have been established it will have further redress against that defendant on the ground that if the Illinois Central Railroad Company, notwithstanding the custom which requires the carrier having the long haul to supply the cars, should refuse the complainant this privilege while supplying cars under similar conditions to other small carriers, its refusal would be an unjust and illegal discrimination that could and ought to be corrected by this Commission.

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In addition to its lack of refrigerator cars the complainant has no cabbage houses or any receiving station at either of the two sidings in question. There is no commercial settlement at either place, or any community except such as may be found in any well-settled farming country. Moreover, the defendants pointed out at the hearing that the two sidings are not the public property of the complainant, but are the private property of Piper and Hanche, respectively. This suggestion is met by the complainant with the assertion that the publication by it of a schedule of rates from these sidings is, in itself, its guaranty that both are or will be available to the general public and that this Commission must therefore accept them as public stations. At the time of the hearing the complainant had no track scales either at these sidings or elsewhere on its line, but the testimony showed that track scales were then being installed at Racine.

At Berryville the Chicago & Northwestern Railway Company, besides the usual side tracks and freight houses, has a long siding running to two separate cabbage houses at which for years it has received the cabbage product of the neighborhood for shipment to the southern markets which the complainant desires to reach. While there was some car shortage last year, in general there has been little complaint by cabbage shippers of the facilities or service offered them by that company. It runs about 15 trains daily by which this commodity may be moved to the cabbage consuming markets. In addition to the outlet offered by that company to southern markets, the cabbage shippers of the neighborhood can readily reach the siding and receiving station of the Chicago, Milwaukee & St. Paul Railway Company at Racine Junction, about 2 miles away; and during the last year there was a considerable shipment to southern markets from that point. As an indication that these services and facilities have been sufficient in the past and have afforded and will continue to afford reasonable and satisfactory routes to the markets in question some stress is laid by the defendants upon the fact shown of record that the cabbage acreage of this neighborhood has increased over 500 per cent during the past ten years and several hundred per cent during the past five years. The production of cabbages in the district has been concededly a successful and profitable business. But the complainant urges that cabbage producers can not profitably haul their product more than 3 or 4 miles to a railroad station, and the claim is made that the establishment of the through routes asked for in the petition would tend to develop and enlarge the cabbage-producing territory to the west.

On these facts the defendants insist that reasonable and satisfactory through routes now exist over which the cabbage product of

the district described in the petition may readily and promptly find an outlet to the desired markets in the South. The complainant on the other hand denies that a reasonable and satisfactory through route exists; and in this connection its counsel puts an interpretation upon the provision of law under which the Commission is authorized to act in such cases that has not heretofore been suggested. The language of the clause in question is as follows:

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, etc.

And counsel for the complainant insists that the contention of the defendants that "the *territory* through which the petitioner is operating is also served by the Chicago & Northwestern Railway Company and that reasonable and satisfactory rates (routes) now exist" is based upon "a perverted reading of the proviso" of that clause. Counsel's own reading of it apparently is that there are no reasonable and satisfactory routes because "there is no joint rate or through route from *points* on the petitioner's line to points upon the line of the Illinois Central." In other words, his contention seems to be that it does not satisfy the requirements of the law if the neighborhood or territory, in which the shipping community is and through which both lines run, is already served by a reasonable and satisfactory through route; but that the law means that if there are already no reasonable and satisfactory through routes to the markets in question from points on his line in that neighborhood or territory the Commission has the authority to and must establish such through routes.

We are unable to perceive the force of this suggestion. It proceeds apparently on the theory that the sole object of the provision above quoted was to afford a means by which new lines, with the aid of the Commission, may profitably force their way into shipping districts built up and already well and adequately served by older lines, and thus seize and divide with the latter such traffic as may be offered for movement. If that be the import of the clause in question, it is too well concealed to be readily discernible. With the development of the power of the Commission to regulate rates and to protect the public interests by readjusting them when in excess of reasonableness and fairness, the need of competing lines becomes less vital to shipping communities whose transportation facilities are already ample.

And had the Congress intended thus to interfere in the competitive struggles of carriers for traffic it can not be doubted that its policy would have been announced in more definite language. We regard it as clear that the purpose of the clause was to afford relief to shipping communities, and not to aid carriers to acquire strategic advantages in their contests with one another. While it may not be doubted that a railroad company is competent to file a complaint before us under the clause in question and to demand an order establishing through routes and joint rates with its connections, its right to such relief is to be tested by the needs of the community which it seeks thus to serve, and not by the fact that stations on its line in such communities have not been accorded such routes and rates by connecting lines.

The only question therefore that remains to be considered is whether, in the language of the proviso, any "reasonable or satisfactory through route exists" from the cabbage producing district described in the record to the southern markets which the complainant desires to reach. The proper solution of such an inquiry must depend, of course, upon the special facts and circumstances of each case and upon the transportation requirements of the particular community involved. A trading point or commercial center where many different commodities are dealt in and are the subjects of transportation may present the question in an aspect quite different to that presented by a country district with traffic limited in variety and often, as in this case, consisting of practically only one commodity of any importance from a traffic point of view. Under all the facts and circumstances disclosed upon this record, we must hold that the district in question already enjoys the advantages of reasonable and satisfactory through routes. A freight-receiving station in an agricultural community that is close at hand to one farmer or producer must of necessity be further away from his next neighbor. And unless it be that every farmer is entitled to have the rails run to his own door a farming community that is required to haul its products no farther than three-quarters of a mile to a mile and a half, as shown in this record, in order to reach the freight-receiving stations of well-established lines, must be held to be reasonably well served. That the shipping district here referred to has been well served by the Chicago and Northwestern Railroad Company is shown by the fact that it has enjoyed a prosperity and growth beyond the average of concededly prosperous farming communities.

This view of the controversy would doubtless be clearer to the complainant if there were a competing line only three-quarters of a mile to the west of its own tracks. It is scarcely necessary to add that the apprehension of counsel that the merits of complainant's contention

may be prejudiced or obscured by the fact that it is an electric line is without foundation. The act makes no distinction between railroads that are operated by electricity and those that use steam; nor has the Commission thought at any time to make such distinction. Both are subject to the act when engaged in interstate transportation and are entitled to equal consideration in any controversy before us. Moreover, progress in the science of electricity and the rapid increase of new devices for its application have led many practical railroad men to think that we may be measurably near its general use as the chief motive power in transportation.

The complaint must be dismissed, and it will be so ordered.

13 I. C. C. Rep.

No. 1032.

MILWAUKEE-WAUKESHA BREWING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY, AND WISCONSIN CENTRAL RAILWAY COMPANY.

Submitted October 24, 1907. Decided December 9, 1907.

Upon the circumstances disclosed by the record, *Held*, that defendants' refusal to apply their carload rates to shipments of mineral water when transported with beer and beer products in mixed carloads is not unlawful. *Paper Mills Co. v. Penn. R. Co. et al.*, 12 I. C. C. Rep., 438, cited and approved.

George A. Schroeder for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Although the complaint in this case alleges that the rates charged by defendants for transporting beer, ale, porter, malt tonics and mineral water in mixed carload lots from Waukesha, Wis., to points in the States of Minnesota, Iowa and North and South Dakota are unjust and unreasonable, the real grievance of complainant, as disclosed by the evidence at the hearing and the arguments of counsel, is the refusal of defendants to apply their carload rates to the transportation, between the points indicated, of carloads made up of less than carload shipments of mineral water and beer and beer products. The material facts are as follows:

For eight years and upward complainant has been engaged at Waukesha, Wis., in the manufacture and sale of beer, ale, porter, malt tonic, ginger ale and mineral water. It appears to be the only company in the State of Wisconsin which manufactures and sells beer and beer products and also bottles and sells mineral water. The

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water bottled and sold by complainant is known as "Waukesha Imperial" and is produced from a spring on the brewery premises. Complainant manufactures yearly from 30,000 to 40,000 barrels of beer, four-fifths of which is shipped from Waukesha, and it bottles and ships approximately 50 carloads of water a year. Most of the water shipped by complainant is handled and bottled as it comes from the spring, and in markets like Chicago and Milwaukee is delivered to families in 10-gallon cans and half-gallon bottles. Some of the water is carbonated before it is shipped, but to what extent does not appear. Six or more large springs of mineral water, considered valuable for medicinal purposes, are located in Waukesha, and several companies are engaged exclusively in the business of preparing this water for sale. Extensive shipments of these Waukesha waters are made in tank cars, barrels, carboys, cases and bottles to all parts of the United States. About one-third of the total amount of mineral water shipped by all dealers from Waukesha yearly is shipped in cases and bottles in less than carload lots, and this is about the proportion of less than carload shipments by complainant.

There are located in Waukesha and in Milwaukee, Wis., which is about 20 miles distant, a number of breweries which manufacture and sell beer and beer products only, and which compete with complainant in supplying the trade.

Shipments of beer and beer products and mineral water from Waukesha, Milwaukee and from other points in Wisconsin to points west of the Mississippi River are governed as to rates and conditions of shipment by the Western Classification. Under this classification beer and beer products and mineral water in cases and bottles each take the fifth-class rate in shipments of carload lots and the third-class rate in shipments of less than carload lots. The classification allows the mixing of beer, beer tonic, hop tonic, hop-tea tonic and weiss beer in cases and bottles to make a carload taking the fifth-class rate, but does not allow the mixing of mineral water in cases and bottles with beer and beer products in cases and bottles to secure the carload rate on the combined shipment.

Mixed shipments of mineral water and beer originating in territory east of the Indiana-Illinois State line and destined to points on the Mississippi River, but not west thereof, are transported at the carload rate under the classification which obtains in Official Classification territory. In that territory which includes that part of the country north of the Potomac and Ohio rivers, east of the Great Lakes, and east of an imaginary line drawn from St. Louis, Mo., to Chicago, Ill., a general rule is in force which allows the mixing of all commodities taking the same less than carload rates to secure the carload rate on the entire shipment. This rule does not generally

prevail in Western Classification territory, which comprises that part of the country west of the Mississippi River and west of Official Classification territory. Through an exception to the Western Classification, made to conform with the Illinois State classification, and with a desire, as stated by witnesses for the defendants, to place the Milwaukee gateway on a parity with Chicago, complainant, located at an intermediate point, can ship its product to all points in Illinois, with the exception of Chicago, which takes a commodity rate, in mixed carloads under the Official Classification, which also obtains with respect of shipments to all points in Official Classification territory.

Whilst shipments of beer and mineral water in cases and bottles in mixed carloads at the carload rate may be made from Ohio and Indiana points to the Mississippi River and intermediate points, the evidence does not show that any such shipments have been made, or that complainant has ever met competition of this character from any point east of the Indiana-Illinois State line.

Upon the facts disclosed in this record, and principles announced in the recent case of *Paper Mills Company v. Pennsylvania Railroad Company et al.*, 12 I. C. C. Rep., 438, we are of opinion that the refusal of defendants to apply their carload rates to the transportation of mineral water and beer and beer products in mixed carloads, where the transportation is controlled by the Western Classification, has not been shown to be unlawful. The complaint will, therefore, be dismissed, and an order will be entered accordingly.

CLEMENTS and LANE, *Commissioners*, dissenting:

The prevailing opinion is based on the assumption that a rule is legal and reasonable which denies to a shipper the right to mix in one carload bottled mineral water and bottled beer—two articles of approximately equal value, packed in the same manner, and bearing the same class rate. No transportation reason can be given for the application of such rule under such circumstances, and no competitive condition has, in our opinion, been shown to justify such a rule in this instance.

13 I. C. C. Rep.

No. 1197.

BANNER MILLING COMPANY

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

1. Complainant insisted that the differential of 2 cents per 100 pounds upon grain and grain products to New England points in favor of New York was excessive; *Held*, following *Boston Chamber of Commerce v. Lake Shore & Michigan Southern Ry. Co.*, 1 I. C. C. Rep., 436; *Toledo Produce Exchange v. Lake Shore & Michigan Southern Ry. Co.*, 5 I. C. C. Rep., 166, that upon the record the Commission would not disturb this differential.
2. Complainant is engaged in grinding spring wheat flour at Buffalo in competition with mills located at Minneapolis. On May 1, 1907, rate from Buffalo to New York on flour was advanced from 10 cents to 11 cents per 100 pounds, while no similar advance was made from Minneapolis; *Held*, that this 11 cent rate and one of 13 cents to New England points were unjust and unreasonable and should not exceed 10 cents to New York and 12 cents to New England points.
3. No order will be made in this case pending leave granted the defendant to put in a proportional rate on ex-lake grain, which would correct the discrimination.

Shire & Jellinek for complainant.

A. H. Harris and *Clyde Brown* for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

At the present time three general grades of flour are produced in the eastern portion of the United States. The best, or that which commands the highest price, is ground from spring wheat, the next from Kansas wheat, and the poorest from winter wheat. Kansas wheat is a winter wheat, but harder and so far superior to other winter wheats as to be in a class by itself.

It was claimed by the complainant that these different kinds of flour were not competitive. They are all flour and can all be used for the same general purposes, and to this extent they are competitive. It would appear, however, that spring wheat flour sells for some 50
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cents a barrel more than winter wheat flour in the New York market, so that in a more restricted sense it may be said that spring wheat flour and winter wheat flour do not compete. A small advantage in favor of the mill grinding winter wheat would not be felt by the spring wheat mill to the same extent that a similar advantage enjoyed by a competing miller of spring wheat would be.

The spring wheat of the United States is mainly grown in Minnesota and the two Dakotas, and is largely converted into flour at Chicago and points west. Generally speaking, this wheat can be and is milled in transit upon the through rate from the point of origin of the wheat to destination of the flour. The largest milling center is Minneapolis. No milling-in-transit privileges are enjoyed there, but proportional rates upon both wheat and flour are established from that market, which are the equivalent of a milling-in-transit privilege. Duluth is a considerable milling center and wheat coming into this market pays the local rate, while the product again goes out upon the local rate.

Our second largest milling center to-day is what is known as the Buffalo-Rochester district, including the Niagara frontier. The wheat milled in this district is almost entirely spring wheat. This case was tried, together with four others involving the same general questions. Of the five complainants in this case and in the four next succeeding cases, four were engaged almost exclusively in the milling of spring wheat, while the fifth used about 40 per cent of winter wheat. It appears from the testimony that probably 90 per cent of all the wheat milled in this section is spring wheat.

This wheat reaches the mill entirely by the rail and lake route; that is, it is brought to some lake port, ordinarily Duluth, by rail, and from there shipped by water to Buffalo, where it usually reaches the mill by some kind of rail transfer. This wheat pays the regular rail rate up to the lake port, moving from the lake port to Buffalo in tramp vessels at rates varying considerably from season to season and during different portions of the same season.

This complainant is the owner of one of the mills operating at Buffalo and grinding spring wheat exclusively. Its product is mainly disposed of in New England and points east of Buffalo, which take the New York rate or some rate basing upon that. Its complaint is that the rate of 13 cents per 100 pounds on flour from Buffalo to Boston, which was made effective May 1, 1907, is excessive and discriminatory.

Most New England points take the Boston rate, and this rate from Buffalo and points west upon grain and grain products is always 2 cents higher than the New York rate. The complainants

insist that this differential of 2 cents per 100 pounds above New York is excessive.

Rates to New England are higher than those to New York from all western points of origin, and this relation of rates has been approved by the Commission in previous cases: *Boston Chamber of Commerce v. Lake Shore & Michigan Southern Ry. Co.*, 1 I. C. C. Rep., 436; *Toledo Produce Exchange v. Lake Shore & Michigan Southern Ry. Co.*, 5 I. C. C. Rep., 166. The arbitrary of 2 cents per 100 pounds on grain and grain products, which is added to the New York rate in determining the New England rate, has been for a long time in effect, was established in consequence of, although not exactly in accordance with, the decision of this Commission in the last case above cited, and we are not inclined to disturb it, certainly upon this record. As already said, this Boston rate applies to nearly the whole of New England, often carrying the shipment to out of the way places and by more or less devious routes. On the whole, it does not seem unreasonable that flour going to various points of consumption in New England territory should pay a rate 2 cents above that paid from Buffalo to New York; the average distance would be considerably greater and the average cost of transportation considerably more. This contention of the complainant is not, therefore, sustained.

The real question which we have therefore to consider is whether the rate of 11 cents from Buffalo to New York, that being the base rate upon which these others are established, which went into effect May 1, 1907, is unlawful.

Rates from Buffalo to New York vary with rates in what is known as Central Freight Association territory, the rate from Chicago being the base. On May 1, 1907, the local grain rate from Chicago to New York was advanced 2 cents—from $17\frac{1}{2}$ cents to $19\frac{1}{2}$ cents—and this occasioned the advance of 1 cent from Buffalo. The complainant insists that this rate of 11 cents is unjust and unreasonable mainly for the reason that it imposes a higher transportation charge upon its product, while the transportation charge which these defendants assess against its competitor remains the same. The exact point of complaint appears, by a comparison of the rate from Minneapolis, which, as already said, is the largest producing center for spring wheat flour, with that from Buffalo.

The all-rail rate from Minneapolis to New York during the summer of 1905 was $22\frac{1}{2}$ cents; from Buffalo, 9 cents; during the summer of 1906 the rate from Minneapolis was increased to 25 cents, that from Buffalo to 10 cents; during the summer of 1907 the Minneapolis rate remained at 25 cents, but the rate from Buffalo, beginning May 1, 1907, was advanced to 11 cents.

The defendant insists that the Buffalo rate is controlled not by the Minneapolis, but by the Chicago base, and it urges that while the rate from Chicago during the summer of 1906 was $17\frac{1}{2}$ cents, it was, during 1907, $19\frac{1}{2}$ cents; but a closer examination of these tariffs discloses the fact that while the local rate from Chicago is as stated, there is in force a proportional tariff applicable to flour ground west of Chicago from spring wheat, or ground at Chicago from spring wheat, of 16.7 cents, and it further appeared from testimony that while there was no published rate of this sort during the season of 1906, carriers east of Chicago did accept as their division of the through rate this same 16.7 cents. The practical effect of the advance of the Buffalo-New York rate to 11 cents was to increase the transportation charge paid by the product of the complainant, while that imposed upon its competitor remained exactly the same.

Large quantities of flour are ground in Illinois, Indiana, Ohio, and east from winter wheat raised in these States, and this wheat and its products do pay, in all cases, the increased rate; but it was claimed by the complainants, and is evidently true, that the Buffalo product is not in competition with these mills, but with the spring-wheat mills of the Northwest.

The evidence shows that during no season of open navigation for the last ten years has the defendant maintained a rate higher than 10 cents from Buffalo to New York, except during the summer of 1903, when it was $10\frac{1}{2}$ cents. During four of those seasons it has been 9 cents. The mere fact that the present rate is higher than in recent years would be of itself, unless explained, a sufficient reason upon which we might hold that the 11-cent rate was excessive. It is, however, not so much the rate itself as the resulting discrimination with which the complainant finds fault. The defendant says that a reduction of this rate would necessitate a reduction of all its rates from Central Freight Association territory. Without inquiring whether this is or is not the fact, if there were no element of discrimination in this case we should hesitate to hold upon this record, and in view of the position taken by the complainants that this rate was intrinsically too high.

A most important consideration in determining the reasonableness of a rate is the relation of the rate under discussion to others, and this is especially so where, as in the present case, the rate attacked is highly competitive. It appeared from the testimony that during the previous year extensive milling operations had been conducted upon a margin of profit not exceeding 3 cents per barrel. This increase in rate would amount to 2 cents per barrel, so that if the complainant had operated for the year before upon an equality

with other manufacturers of spring wheat two-thirds of its entire profit would have been taken away by this advance.

The defendant insists that there is no necessary relation between the flour rates from Buffalo to New York and those from Minneapolis or Duluth to the same destination, but the above statement conclusively shows that there must be a substantial relation in these rates and that to materially disturb this relation is to annihilate the business at one point or the other. In fact, such a relation has been maintained for many years in the past.

Attention was called to the fact that the production of flour in the Buffalo-Rochester district had increased in recent years more rapidly than in any other great spring wheat milling center, and it was urged that this conclusively showed that the adjustment of rates in the past had been too favorable to Buffalo. It appears from the testimony that some three years ago the Washburn-Crosby Company, with large mills at Minneapolis, determined to construct another mill at Buffalo, and that the increase in question is entirely due to the product of this mill. This industry was located at Buffalo upon the strength of this relation of rates, which had for many years existed, and it would seem to be an argument against rather than in favor of the defendants, who ought not to be permitted, after having by their rates induced the location of this industry, to now possibly destroy it by an unwarranted change in those rates.

It was claimed upon the trial that even under the present adjustment Buffalo had the advantage of Duluth, and considerable evidence was introduced bearing upon that point. The manner of conducting business at these two milling points is so different that no exact finding is possible. Duluth can buy its supplies of wheat from the country during the entire winter, but must ship east its product mainly during the period of navigation. The reverse is true with the Buffalo miller, who can ship his product during the entire season, but who must accumulate his stock of wheat before navigation closes. This compels him to pay high rates for water transportation toward the end of the season, when his movement is the largest. It was also said that the Buffalo miller was obliged to pay a transfer charge which the Duluth miller avoided by locating his warehouse upon the docks and that the Duluth miller obtained the benefit of a dockage allowance which the Buffalo miller, who bought his wheat after cleaning, could not get.

It is impossible to make any definite finding upon this point; nor would it be of great importance were it otherwise. The competition which the complainant meets is not merely nor principally from Duluth, but rather from other points at which spring wheat is milled.

Without holding that there is any absolute relation between this rate from Buffalo to the seaboard and that from Minneapolis or other spring wheat milling centers which this defendant would be obliged under any and all circumstances to maintain, we are of the opinion that in normal conditions at least the general relation which has been in effect for years in the past ought not to be unnecessarily disturbed now; that the imposition of the 11-cent rate to New York and the 13-cent rate to Boston and other New England points was unjust and unreasonable, and that the rate ought not to have exceeded 10 cents to New York and 12 cents to Boston.

We have already indicated that the effect of this rate upon the business of the complainant is one of the important considerations which has led to this conclusion and if that effect could be eliminated we should not be disposed to order a reduction in this rate, which might necessitate other extensive reductions. These carriers do at the present time and have for many years applied to the movement of grain reaching Buffalo by water a proportional rate which is lower than the local rate and which is called an ex-lake grain rate. We see no reason why they might not apply a similar proportional rate to the product of this ex-lake grain, and it seems to us that if this were done it would so far satisfy this complaint as to dispense with further action upon our part.

We are of the opinion, therefore, that under present conditions the rate of 13 cents from Buffalo to Boston upon flour and other products of wheat is unjust and unreasonable and that this rate ought not for the future to exceed 12 cents. No order will be made before February 15, 1908, and if within that time the defendant removes the discrimination against the complainant the case will be indefinitely suspended.

No. 1198.

THORNTON & CHESTER MILLING COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY AND NEW YORK, NEW HAVEN & HART-
FORD RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Decision in *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, *supra*, cited and
applied.*Shire & Jellinek* for complainant/
J. L. Seager for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant, which operates a flour mill at Buffalo, made shipment of a carload of flour over the lines of the defendants from Buffalo, N. Y., to Providence, R. I. The rate applicable to the movement of this shipment was a joint rate, duly established by the defendants, of 13 cents per 100 pounds. The complainant insists that this rate was unjust and unreasonable and asks that it be so declared.

This case was heard with *Banner Milling Company v. New York Central & Hudson River Railroad Company*, *supra*, and is controlled by that. Providence takes the Boston rate, and no question is made but that whatever rate is proper to Boston should also be applied to Providence. We are of the opinion that the rate of 13 cents was and is unreasonable and that the rate for the future should not exceed 12 cents under conditions now existing. For reasons stated in the principal case, no order will be made before February 15, 1908.

13 I. C. C. Rep.

No. 1199.

WASHBURN-CROSBY COMPANY

v.

ERIE RAILROAD COMPANY AND NEW YORK, NEW
HAVEN & HARTFORD RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Decision in *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, *supra*, cited and applied.

Shire & Jellinek for complainant.

C. F. Brownell and *H. A. Taylor* for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant operates a flour mill at Buffalo, N. Y., and complains that the rate applied to the shipment of its flour from Buffalo to Unionville, Conn., over the lines of the defendants is unjust and unreasonable. The rate in question is a joint rate of the defendants, and the complainant shows an actual movement of one carload of flour under this rate, which is 13 cents per 100 pounds.

Unionville is a New England point taking the Boston rate, and no question was made upon the hearing but that a reasonable rate to Boston would also be reasonable to Unionville. The case is controlled by *Banner Milling Company v. New York Central & Hudson River Railroad Company*, *supra*, with which it was heard.

We find that under present conditions the rate of 13 cents from Buffalo to Unionville was, when established, and still is, unjust and unreasonable, and that the same ought not to exceed 12 cents for the future. The making of an order in this case will be deferred for the reasons stated in the *Banner Milling Company* case.

13 I. C. C. Rep.

No. 1200.

WASHBURN-CROSBY COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Decision in *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, *supra*, cited and applied.

Shire & Jellinek for complainant.

Kenefick, Cooke & Mitchell for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This case involves the rate on flour from Buffalo, N. Y., to Irvington, N. J., which is 11 cents per 100 pounds, and which the complainant attacks as unlawful. The complaining company is engaged in the manufacture of flour at Buffalo, and made an actual shipment from there to Irvington, in May, 1907.

Irvington, N. J., is a New York point, and it is not claimed that it should take a higher rate from Buffalo than is made applicable to New York. We have found in *Banner Milling Company v. New York Central & Hudson River Railroad Company*, *supra*, that the New York rate of 11 cents, established May 1, 1907, and still in effect over lines from Buffalo, was unjust and unreasonable under existing conditions. This case was heard with that and should receive the same disposition. We find that the rate of 11 cents from Buffalo to Irvington was and is unjust and unreasonable and that the rate for the future ought not to exceed 10 cents. No order will be made in this case until the principal case is finally disposed of.

13 I. C. C. Rep.

No. 1201.

WASHBURN-CROSBY COMPANY.

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Rates on grain and grain products for domestic consumption from Buffalo to Philadelphia and Baltimore are one-half cent per 100 pounds lower than to New York, but from Chicago to Philadelphia and Baltimore such rates are 2 cents and 3 cents per 100 pounds, respectively, lower than to New York: *Held*, upon application for the same differentials from Buffalo as from Chicago to Philadelphia and Baltimore, that Buffalo is not entitled to these differentials. The failure of Buffalo to obtain these differentials is due to its location—a disadvantage which defendant has never attempted to equalize in the past and which, in the opinion of the Commission, defendant ought not to be required to equalize now.

Shire & Jellinek for complainant.

Frank Rumsey and G. S. Patterson for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint puts in issue the relation of rates on flour, bran, and other wheat products from Buffalo to New York, Philadelphia, and Baltimore. The complainant operates the largest mill located at Buffalo and is engaged exclusively in the production of spring wheat flour. This case was heard with *Banner Milling Company v. New York Central & Hudson River Railroad Company, supra*, which may be referred to for a statement of the conditions under which spring wheat is ground by mills situated like that of the complainant.

Rates on flour from Buffalo to Philadelphia and Baltimore are one-half cent per 100 pounds lower than to New York. When the complaint was filed, the rate to New York was 11 cents per 100 pounds, to Philadelphia and Baltimore 10½ cents.

Rates on grain and grain products, when for domestic consumption, from Chicago and from all territory west and northwest of Chicago are 2 cents per 100 pounds less to Philadelphia than to New York and 3 cents less to Baltimore. It will appear from an examination of the Banner Milling Company case that spring wheat flour moves to the Atlantic seaboard from points west of Chicago or is ground upon a through milling-in-transit rate, so that practically all millers of spring wheat, except in the Buffalo-Rochester district, enjoy the benefit of those lower rates to Philadelphia and Baltimore points.

The complainant insists that this advantage in rate enjoyed by its competitors excludes it and all Buffalo millers from the Baltimore and Philadelphia markets, and it is apparent from what is stated in the former case that this must be true, for it there appeared that the entire profit in grinding flour might not exceed, and in some cases during the previous year had not exceeded, 3 cents per barrel, or 1½ cents per 100 pounds, so that an advantage in transportation of 4 cents a barrel to Philadelphia and 6 cents a barrel to Baltimore would be prohibitive against the complainant. We are asked to declare this discrimination unlawful and to establish the same relation of rates from Buffalo to these three cities as obtains from Chicago.

The distance from Buffalo to New York, Philadelphia, and Baltimore is substantially the same. Lines of transportation between Buffalo and New York are more direct than to Philadelphia and Baltimore; that is, the movement of traffic is much greater by these lines. It would seem altogether probable that the cost of transportation to Philadelphia and Baltimore must be as great as to New York. Upon the basis of the cost of the service, therefore, the present rates can not be declared unjust or unreasonable.

In the Banner Milling Company case we held that where railroads had maintained for a long time a general relation of rates, upon the strength of which industries had been established, that relation must not be unnecessarily disturbed. There is in the case before us no element of this kind, since the relation in rates for which the complainant contends has never, so far as this record discloses, been in effect from Buffalo, the present adjustment in rates between these three points being substantially the same as in the past.

It was said in testimony that formerly the Buffalo miller found a market at Baltimore and Philadelphia, which no longer exists, but this seems to be due to the circumstance that this business is now conducted upon a narrower margin, so that a slight difference in the rate is of more importance than formerly.

The real question presented to us is, therefore, whether, owing to competitive conditions, these millers at Buffalo should be given the same differentials to Baltimore and Philadelphia as compared with

Without holding that there is any absolute relation between this rate from Buffalo to the seaboard and that from Minneapolis or other spring wheat milling centers which this defendant would be obliged under any and all circumstances to maintain, we are of the opinion that in normal conditions at least the general relation which has been in effect for years in the past ought not to be unnecessarily disturbed now; that the imposition of the 11-cent rate to New York and the 13-cent rate to Boston and other New England points was unjust and unreasonable, and that the rate ought not to have exceeded 10 cents to New York and 12 cents to Boston.

We have already indicated that the effect of this rate upon the business of the complainant is one of the important considerations which has led to this conclusion and if that effect could be eliminated we should not be disposed to order a reduction in this rate, which might necessitate other extensive reductions. These carriers do at the present time and have for many years applied to the movement of grain reaching Buffalo by water a proportional rate which is lower than the local rate and which is called an ex-lake grain rate. We see no reason why they might not apply a similar proportional rate to the product of this ex-lake grain, and it seems to us that if this were done it would so far satisfy this complaint as to dispense with further action upon our part.

We are of the opinion, therefore, that under present conditions the rate of 13 cents from Buffalo to Boston upon flour and other products of wheat is unjust and unreasonable and that this rate ought not for the future to exceed 12 cents. No order will be made before February 15, 1908, and if within that time the defendant removes the discrimination against the complainant the case will be indefinitely suspended.

No. 1198.

THORNTON & CHESTER MILLING COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY AND NEW YORK, NEW HAVEN & HART-
FORD RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Decision in *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, *supra*, cited and
applied.

Shire & Jellinek for complainant/
J. L. Seager for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant, which operates a flour mill at Buffalo, made shipment of a carload of flour over the lines of the defendants from Buffalo, N. Y., to Providence, R. I. The rate applicable to the movement of this shipment was a joint rate, duly established by the defendants, of 13 cents per 100 pounds. The complainant insists that this rate was unjust and unreasonable and asks that it be so declared.

This case was heard with *Banner Milling Company v. New York Central & Hudson River Railroad Company*, *supra*, and is controlled by that. Providence takes the Boston rate, and no question is made but that whatever rate is proper to Boston should also be applied to Providence. We are of the opinion that the rate of 13 cents was and is unreasonable and that the rate for the future should not exceed 12 cents under conditions now existing. For reasons stated in the principal case, no order will be made before February 15, 1908.

13 I. C. C. Rep.

No. 1199.

WASHBURN-CROSBY COMPANY

v.

ERIE RAILROAD COMPANY AND NEW YORK, NEW
HAVEN & HARTFORD RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Decision in *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, *supra*, cited and applied.

Shire & Jellinek for complainant.

C. F. Brownell and *H. A. Taylor* for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant operates a flour mill at Buffalo, N. Y., and complains that the rate applied to the shipment of its flour from Buffalo to Unionville, Conn., over the lines of the defendants is unjust and unreasonable. The rate in question is a joint rate of the defendants, and the complainant shows an actual movement of one carload of flour under this rate, which is 13 cents per 100 pounds.

Unionville is a New England point taking the Boston rate, and no question was made upon the hearing but that a reasonable rate to Boston would also be reasonable to Unionville. The case is controlled by *Banner Milling Company v. New York Central & Hudson River Railroad Company*, *supra*, with which it was heard.

We find that under present conditions the rate of 13 cents from Buffalo to Unionville was, when established, and still is, unjust and unreasonable, and that the same ought not to exceed 12 cents for the future. The making of an order in this case will be deferred for the reasons stated in the *Banner Milling Company* case.

13 I. C. C. Rep.

No. 1200.

WASHBURN-CROSBY COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Decision in *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, *supra*, cited and applied.

Shire & Jellinek for complainant.

Kenefick, Cooke & Mitchell for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This case involves the rate on flour from Buffalo, N. Y., to Irvington, N. J., which is 11 cents per 100 pounds, and which the complainant attacks as unlawful. The complaining company is engaged in the manufacture of flour at Buffalo, and made an actual shipment from there to Irvington, in May, 1907.

Irvington, N. J., is a New York point, and it is not claimed that it should take a higher rate from Buffalo than is made applicable to New York. We have found in *Banner Milling Company v. New York Central & Hudson River Railroad Company*, *supra*, that the New York rate of 11 cents, established May 1, 1907, and still in effect over lines from Buffalo, was unjust and unreasonable under existing conditions. This case was heard with that and should receive the same disposition. We find that the rate of 11 cents from Buffalo to Irvington was and is unjust and unreasonable and that the rate for the future ought not to exceed 10 cents. No order will be made in this case until the principal case is finally disposed of.

13 I. C. C. Rep.

No. 1201.

WASHBURN-CROSBY COMPANY.

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted December 3, 1907. Decided December 16, 1907.

Rates on grain and grain products for domestic consumption from Buffalo to Philadelphia and Baltimore are one-half cent per 100 pounds lower than to New York, but from Chicago to Philadelphia and Baltimore such rates are 2 cents and 3 cents per 100 pounds, respectively, lower than to New York: *Held*, upon application for the same differentials from Buffalo as from Chicago to Philadelphia and Baltimore, that Buffalo is not entitled to these differentials. The failure of Buffalo to obtain these differentials is due to its location—a disadvantage which defendant has never attempted to equalize in the past and which, in the opinion of the Commission, defendant ought not to be required to equalize now.

Shire & Jellinek for complainant.

Frank Rumsey and G. S. Patterson for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This complaint puts in issue the relation of rates on flour, bran, and other wheat products from Buffalo to New York, Philadelphia, and Baltimore. The complainant operates the largest mill located at Buffalo and is engaged exclusively in the production of spring wheat flour. This case was heard with *Banner Milling Company v. New York Central & Hudson River Railroad Company, supra*, which may be referred to for a statement of the conditions under which spring wheat is ground by mills situated like that of the complainant.

Rates on flour from Buffalo to Philadelphia and Baltimore are one-half cent per 100 pounds lower than to New York. When the complaint was filed, the rate to New York was 11 cents per 100 pounds, to Philadelphia and Baltimore 10½ cents.

Rates on grain and grain products, when for domestic consumption, from Chicago and from all territory west and northwest of Chicago are 2 cents per 100 pounds less to Philadelphia than to New York and 3 cents less to Baltimore. It will appear from an examination of the Banner Milling Company case that spring wheat flour moves to the Atlantic seaboard from points west of Chicago or is ground upon a through milling-in-transit rate, so that practically all millers of spring wheat, except in the Buffalo-Rochester district, enjoy the benefit of those lower rates to Philadelphia and Baltimore points.

The complainant insists that this advantage in rate enjoyed by its competitors excludes it and all Buffalo millers from the Baltimore and Philadelphia markets, and it is apparent from what is stated in the former case that this must be true, for it there appeared that the entire profit in grinding flour might not exceed, and in some cases during the previous year had not exceeded, 3 cents per barrel, or 1½ cents per 100 pounds, so that an advantage in transportation of 4 cents a barrel to Philadelphia and 6 cents a barrel to Baltimore would be prohibitive against the complainant. We are asked to declare this discrimination unlawful and to establish the same relation of rates from Buffalo to these three cities as obtains from Chicago.

The distance from Buffalo to New York, Philadelphia, and Baltimore is substantially the same. Lines of transportation between Buffalo and New York are more direct than to Philadelphia and Baltimore; that is, the movement of traffic is much greater by these lines. It would seem altogether probable that the cost of transportation to Philadelphia and Baltimore must be as great as to New York. Upon the basis of the cost of the service, therefore, the present rates can not be declared unjust or unreasonable.

In the Banner Milling Company case we held that where railroads had maintained for a long time a general relation of rates, upon the strength of which industries had been established, that relation must not be unnecessarily disturbed. There is in the case before us no element of this kind, since the relation in rates for which the complainant contends has never, so far as this record discloses, been in effect from Buffalo, the present adjustment in rates between these three points being substantially the same as in the past.

It was said in testimony that formerly the Buffalo miller found a market at Baltimore and Philadelphia, which no longer exists, but this seems to be due to the circumstance that this business is now conducted upon a narrower margin, so that a slight difference in the rate is of more importance than formerly.

The real question presented to us is, therefore, whether, owing to competitive conditions, these millers at Buffalo should be given the same differentials to Baltimore and Philadelphia as compared with

the rate to New York, which apply to the transportation of the products of their competitors.

The lake-and-rail rate upon flour for domestic use from Minneapolis during the summer of 1907 was 23 cents to New York, 21 cents to Philadelphia, and 20 cents to Baltimore, and traffic might move under these rates through Buffalo. When it did, the railroads leading to these respective ports received for their service a sum which was substantially 2 cents less to Philadelphia and 3 cents less to Baltimore than to New York. The complainant insists that if this defendant, which serves all three of these ports, will carry to Philadelphia and Baltimore for its competitors at this lower rate it should carry at the same rate for it.

The Commission has twice examined, at great length, the matter of these port differentials. *New York Produce Exchange v. Baltimore & Ohio Railroad Co. et al.*, 7 I. C. C. Rep., 612; *in the Matter of Differential Freight Rates to and from Atlantic Ports*, 11 I. C. C. Rep., 13. In both these cases we approved a differential under New York of 2 cents in case of Philadelphia and 3 cents in case of Baltimore as to domestic shipments of grain and grain products, those being the commodities most considered, from Chicago and territory basing upon Chicago or governed by the Chicago rate, and these are the differentials now in effect. The reasons which led us to that conclusion apply to territory west of Buffalo, but not to Buffalo itself. Buffalo is not entitled to these differentials by virtue of its position; if this defendant is bound to concede them to the complainant it is solely because it applies these rates through Buffalo from points west.

This conclusion does not follow. The defendant names these rates to Philadelphia and Baltimore via Buffalo to meet rates made by other lines in order that it may participate in this traffic. The complainant would be in no respect benefited if lines working through Buffalo were to entirely withdraw from this business. The Supreme Court of the United States has repeatedly decided that where a rate is forced by controlling competition, as in the present instance, it can not be made a standard by which to estimate the other rates of the carrier putting it in effect. The charging of a higher rate to some intermediate point would not work a violation of the fourth section, nor is the exaction of a higher charge for the performance of a similar service over a portion of the line, as in the case before us, an undue discrimination.

The failure of Buffalo to obtain these differentials to Philadelphia and Baltimore is due to its location—a disadvantage which this defendant has never attempted to equalize in the past, and which, in our opinion, it ought not to be required to equalize now.

The complaint will be dismissed.

No. 1108.

MILLER WALNUT COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
AND GULF, COLORADO & SANTA FE RAILWAY COM-
PANY.

Submitted November 30, 1907. Decided January 6, 1908.

Defendants' rate of 26½ cents per 100 pounds for the transportation of walnut lumber from Oklahoma City, Okla., to Galveston, Tex., for export, is under the circumstances unjust and unreasonable and should not exceed 21½ cents per 100 pounds for the future.

Samuel Miller for complainant.

A. A. Hurd and *J. R. Koontz* for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant was, at the time of the filing of this complaint, engaged in the manufacture of walnut lumber at Oklahoma City, and the product of its mill was sent to Galveston over the lines of the defendants for export to foreign countries. In the prosecution of its business it came into competition with similar mills located at Kansas City, Mo., the product of which was also carried, to some extent, by the lines of the defendants to Galveston for export. The rate charged from Kansas City by the defendants was 18 cents per 100 pounds, while that from Oklahoma City was 26½ cents. The distance from Kansas City was 962 miles, from Oklahoma City 552 miles. The complainant insisted that the rate charged it by the defendants was unreasonable and also unduly discriminatory in favor of its competitors at Kansas City.

The complainant obtained its logs to the east and northeast of Oklahoma City, to which they were brought by rail. The manufac-

turer at Kansas City also drew his supply of logs to some extent from the same territory, and they were also brought by rail to the mill. There is considerable testimony in this record tending to show that the cost of transporting logs from the forest to the mill at Kansas City was more than that paid by the complainant at Oklahoma City, and that for this reason the rate upon the lumber might well be less from Kansas City than that accorded to the complainant.

It is evident that the cost of laying down this lumber upon the pier at Galveston must depend upon the combined cost of transporting the log to the mill and the lumber from the mill and that therefore a discrimination might be made in the charge imposed upon the transportation of the log as well as in that applied to the lumber. It is not true, however, that the rate which the lumber should bear would depend upon the cost of bringing in the logs, since the distance might be greater in one case or the circumstances of the carriage such that the rate might be properly higher. Nothing is said in the pleadings touching the cost of transporting the logs. The evidence fails to indicate any discrimination either for or against Kansas City in this respect and that element is not, therefore, considered in disposing of the case.

The first contention of the complainant is that the defendants discriminate against it by imposing a higher rate from Oklahoma City than from Kansas City, the distance from Kansas City being greater and the transportation being through Oklahoma City. The defendants justify these rates by alleging competitive conditions at Kansas City which do not exist at Oklahoma City.

This Commission has held in the past that there is a competitive situation at Kansas City with respect to the handling of grain which has justified carriers, including these defendants, in accepting a lower rate from Kansas City to Galveston for export than was applied from Oklahoma City. *In re Export Rates from Points East and West of Mississippi River*, 8 I. C. C. Rep., 185; *In re Export and Domestic Rates*, 8 I. C. C. Rep., 214; *Mayor, etc., of Wichita v. Atchison, Topeka & Santa Fe Railway Company*, 9 I. C. C. Rep., 534; *Farmers', Merchants' & Shippers' Club, etc. v. Atchison, Topeka & Santa Fe Railway Company*, 12 I. C. C. Rep., 351; *Territory of Oklahoma v. Chicago, Rock Island & Pacific Railway Company*, 12 I. C. C. Rep., 367. It is quite possible that the same conditions may exist to a certain extent with respect to lumber, which may be exported through the Atlantic ports or through New Orleans as well as from Galveston. There are, moreover, more carriers leading from Kansas City to Galveston than from Oklahoma City to that port.

These two localities are in competition in the manufacture of this lumber and they draw their supplies largely from the same source.

No. 1278.

OCHELTREE GRAIN COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Submitted December 20, 1907. Decided January 6, 1908.

Previous to December 12, 1906, defendant's rate on snapped corn from Lavery, Okla., to Millican, Tex., and from Lavery, Okla., to Navasota, Tex., had been for a long time 29 cents per 100 pounds, but by tariff effective upon that date the rate was advanced to $36\frac{1}{4}$ cents per 100 pounds. This advanced rate was continued in effect until February 17, 1907, when it was reduced to the former rate, where it stands to-day. Upon that statement we must hold that the rate charged complainant was excessive. The fact that the defendant had for some time maintained a rate of 29 cents and has since reduced its rate to the same figure is in the nature of an admission upon its part that this rate is a fair one, unless explained. Reparation allowed.

Charles West for complainant.

M. L. Bell for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant, L. G. Ocheltree, residing at Chickasha, now in Oklahoma, but at the time of the filing of the complaint embraced in Indian Territory, is engaged in the grain business under the firm style of the Ocheltree Grain Company. In the early part of 1907 he made shipment over the defendant railroad of two carloads of snapped corn, one weighing 43,020 pounds, from Lavery, Okla., to Millican, Tex., and a second, weighing 37,465 pounds, from Lavery, Okla., to Navasota, Tex.

The published rate of the defendant then applicable to the movement of both these shipments was $36\frac{1}{4}$ cents per 100 pounds, and the complainant paid to the defendant charges at this rate. He insists that the rate was excessive; that it should not have exceeded 29 cents per 100 pounds, and that therefore he was overcharged upon the first carload \$31.19 and upon the second carload \$27.17, making in all \$58.36, in which amount he claims reparation. No question is made

13 I. C. C. Rep.

by the defendant as to the fact of the shipments, the weight of the contents, nor the rate paid. The only matter for our consideration is the reasonableness of that rate.

Previous to December 12, 1906, the rate on snapped corn between the points in question over the line of the defendant had been for a long time 29 cents per 100 pounds, but by tariff effective upon that date it was advanced 25 per cent—to 36 $\frac{1}{4}$ cents per 100 pounds. This advanced rate was continued in effect until the 17th day of February, 1907, when it was reduced to the former rate, where it stands to-day. Upon that statement we must hold that the rate charged the complainant was excessive. The fact that the defendant had for some time maintained a rate of 29 cents and has since reduced its rate to the same figure is in the nature of an admission upon its part that this rate is a fair one, unless explained.

The defendant undertakes to explain it by saying that snapped corn and shelled corn had previously taken the same rate; that the advance was for the purpose of establishing a higher rate upon snapped corn, and that this ought to be done because the transportation of snapped corn is more expensive owing to lighter loading and less value, and should properly bear a higher charge.

We do not hold that the defendant may not properly apply a somewhat higher rate to the transportation of snapped corn than to shelled corn. Ordinarily corn is shelled before being shipped, but there seems to be some peculiar reason why in this locality it is shipped frequently in the shuck. Whether under all the circumstances the rates ought to be the same is a question upon which no opinion is expressed.

If this defendant, instead of advancing its rate on snapped corn, had reduced that upon shelled corn and the complainant had then insisted that he was entitled to the same reduction upon corn in the husk as when shelled, this question would be presented fairly; but the mere fact that the rate upon snapped corn and shelled corn ought not to be the same, if so found, would not show that the existing rate on snapped corn was too low.

We hold that the rate charged the complainant was excessive, that a rate of 29 cents per 100 pounds was just and reasonable, and that the complainant is entitled to recover \$58.36, with interest from September 13, 1907, the date of filing the complaint. It does not clearly appear from the testimony when the freight money was actually paid.

the rate to New York, which apply to the transportation of the products of their competitors.

The lake-and-rail rate upon flour for domestic use from Minneapolis during the summer of 1907 was 23 cents to New York, 21 cents to Philadelphia, and 20 cents to Baltimore, and traffic might move under these rates through Buffalo. When it did, the railroads leading to these respective ports received for their service a sum which was substantially 2 cents less to Philadelphia and 3 cents less to Baltimore than to New York. The complainant insists that if this defendant, which serves all three of these ports, will carry to Philadelphia and Baltimore for its competitors at this lower rate it should carry at the same rate for it.

The Commission has twice examined, at great length, the matter of these port differentials. *New York Produce Exchange v. Baltimore & Ohio Railroad Co. et al.*, 7 I. C. C. Rep., 612; *in the Matter of Differential Freight Rates to and from Atlantic Ports*, 11 I. C. C. Rep., 13. In both these cases we approved a differential under New York of 2 cents in case of Philadelphia and 3 cents in case of Baltimore as to domestic shipments of grain and grain products, those being the commodities most considered, from Chicago and territory basing upon Chicago or governed by the Chicago rate, and these are the differentials now in effect. The reasons which led us to that conclusion apply to territory west of Buffalo, but not to Buffalo itself. Buffalo is not entitled to these differentials by virtue of its position; if this defendant is bound to concede them to the complainant it is solely because it applies these rates through Buffalo from points west.

This conclusion does not follow. The defendant names these rates to Philadelphia and Baltimore via Buffalo to meet rates made by other lines in order that it may participate in this traffic. The complainant would be in no respect benefited if lines working through Buffalo were to entirely withdraw from this business. The Supreme Court of the United States has repeatedly decided that where a rate is forced by controlling competition, as in the present instance, it can not be made a standard by which to estimate the other rates of the carrier putting it in effect. The charging of a higher rate to some intermediate point would not work a violation of the fourth section, nor is the exaction of a higher charge for the performance of a similar service over a portion of the line, as in the case before us, an undue discrimination.

The failure of Buffalo to obtain these differentials to Philadelphia and Baltimore is due to its location—a disadvantage which this defendant has never attempted to equalize in the past, and which, in our opinion, it ought not to be required to equalize now.

The complaint will be dismissed.

No. 1108.

MILLER WALNUT COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
AND GULF, COLORADO & SANTA FE RAILWAY COM-
PANY.

Submitted November 30, 1907. Decided January 6, 1908.

Defendants' rate of 26½ cents per 100 pounds for the transportation of walnut lumber from Oklahoma City, Okla., to Galveston, Tex., for export, is under the circumstances unjust and unreasonable and should not exceed 21½ cents per 100 pounds for the future.

Samuel Miller for complainant.

A. A. Hurd and *J. R. Koontz* for defendants.

REPORT OF THE COMMISSIONER.

PROUTY, *Commissioner*:

The complainant was, at the time of the filing of this complaint, engaged in the manufacture of walnut lumber at Oklahoma City, and the product of its mill was sent to Galveston over the lines of the defendants for export to foreign countries. In the prosecution of its business it came into competition with similar mills located at Kansas City, Mo., the product of which was also carried, to some extent, by the lines of the defendants to Galveston for export. The rate charged from Kansas City by the defendants was 18 cents per 100 pounds, while that from Oklahoma City was 26½ cents. The distance from Kansas City was 962 miles, from Oklahoma City 552 miles. The complainant insisted that the rate charged it by the defendants was unreasonable and also unduly discriminatory in favor of its competitors at Kansas City.

The complainant obtained its logs to the east and northeast of Oklahoma City, to which they were brought by rail. The manufac-

turer at Kansas City also drew his supply of logs to some extent from the same territory, and they were also brought by rail to the mill. There is considerable testimony in this record tending to show that the cost of transporting logs from the forest to the mill at Kansas City was more than that paid by the complainant at Oklahoma City, and that for this reason the rate upon the lumber might well be less from Kansas City than that accorded to the complainant.

It is evident that the cost of laying down this lumber upon the pier at Galveston must depend upon the combined cost of transporting the log to the mill and the lumber from the mill and that therefore a discrimination might be made in the charge imposed upon the transportation of the log as well as in that applied to the lumber. It is not true, however, that the rate which the lumber should bear would depend upon the cost of bringing in the logs, since the distance might be greater in one case or the circumstances of the carriage such that the rate might be properly higher. Nothing is said in the pleadings touching the cost of transporting the logs. The evidence fails to indicate any discrimination either for or against Kansas City in this respect and that element is not, therefore, considered in disposing of the case.

The first contention of the complainant is that the defendants discriminate against it by imposing a higher rate from Oklahoma City than from Kansas City, the distance from Kansas City being greater and the transportation being through Oklahoma City. The defendants justify these rates by alleging competitive conditions at Kansas City which do not exist at Oklahoma City.

This Commission has held in the past that there is a competitive situation at Kansas City with respect to the handling of grain which has justified carriers, including these defendants, in accepting a lower rate from Kansas City to Galveston for export than was applied from Oklahoma City. *In re Export Rates from Points East and West of Mississippi River*, 8 I. C. C. Rep., 185; *In re Export and Domestic Rates*, 8 I. C. C. Rep., 214; *Mayor, etc., of Wichita v. Atchison, Topeka & Santa Fe Railway Company*, 9 I. C. C. Rep., 534; *Farmers', Merchants' & Shippers' Club, etc. v. Atchison, Topeka & Santa Fe Railway Company*, 12 I. C. C. Rep., 351; *Territory of Oklahoma v. Chicago, Rock Island & Pacific Railway Company*, 12 I. C. C. Rep., 367. It is quite possible that the same conditions may exist to a certain extent with respect to lumber, which may be exported through the Atlantic ports or through New Orleans as well as from Galveston. There are, moreover, more carriers leading from Kansas City to Galveston than from Oklahoma City to that port.

These two localities are in competition in the manufacture of this lumber and they draw their supplies largely from the same source.

When manufactured at Kansas City the logs are hauled north and east and then the lumber, if going by the lines of the defendants, is hauled back over substantially the same route, whereas when manufactured at Oklahoma City the logs move southerly and the lumber continues on the same course to Galveston.

Under the circumstances, it seems to us that Oklahoma City ought not to be charged a higher rate for the handling of this traffic than obtains from Kansas City, unless the rate from Kansas City is, for some peculiar reason, abnormally and unjustifiably low. It is not only just to Oklahoma City but is for the interest of these defendants to maintain rates which will enable that locality to manufacture in competition with Kansas City. The case discloses that since the filing of the complaint the complainant has ceased business because it was not profitable, and the reason may very well have been the discrimination against its mill in the rate, which would amount to a comfortable profit upon the handling of the lumber.

The defendants stated upon the hearing that they had in contemplation the filing of a tariff higher than 18 cents from Kansas City, and they have since the hearing filed such tariff, naming a rate of 21½ cents, to become effective on January 18, 1908.

We are of the opinion that the rate of 26½ cents, applied to the movement of lumber—loading as heavily as walnut lumber does and moved under the circumstances that surround this export traffic from Oklahoma City to Galveston—is unjust and unreasonable and that this rate ought not to exceed 21½ cents for the future.

Such an order will issue.

13 L. C. C. Rep.

No. 1278.

OCHELTREE GRAIN COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Submitted December 20, 1907. Decided January 6, 1908.

Previous to December 12, 1906, defendant's rate on snapped corn from Lavery, Okla., to Millican, Tex., and from Lavery, Okla., to Navasota, Tex., had been for a long time 29 cents per 100 pounds, but by tariff effective upon that date the rate was advanced to $36\frac{1}{4}$ cents per 100 pounds. This advanced rate was continued in effect until February 17, 1907, when it was reduced to the former rate, where it stands to-day. Upon that statement we must hold that the rate charged complainant was excessive. The fact that the defendant had for some time maintained a rate of 29 cents and has since reduced its rate to the same figure is in the nature of an admission upon its part that this rate is a fair one, unless explained. Reparation allowed.

Charles West for complainant.

M. L. Bell for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant, L. G. Ocheltree, residing at Chickasha, now in Oklahoma, but at the time of the filing of the complaint embraced in Indian Territory, is engaged in the grain business under the firm style of the Ocheltree Grain Company. In the early part of 1907 he made shipment over the defendant railroad of two carloads of snapped corn, one weighing 43,020 pounds, from Lavery, Okla., to Millican, Tex., and a second, weighing 37,465 pounds, from Lavery, Okla., to Navasota, Tex.

The published rate of the defendant then applicable to the movement of both these shipments was $36\frac{1}{4}$ cents per 100 pounds, and the complainant paid to the defendant charges at this rate. He insists that the rate was excessive; that it should not have exceeded 29 cents per 100 pounds, and that therefore he was overcharged upon the first carload \$31.19 and upon the second carload \$27.17, making in all \$58.36, in which amount he claims reparation. No question is made

by the defendant as to the fact of the shipments, the weight of the contents, nor the rate paid. The only matter for our consideration is the reasonableness of that rate.

Previous to December 12, 1906, the rate on snapped corn between the points in question over the line of the defendant had been for a long time 29 cents per 100 pounds, but by tariff effective upon that date it was advanced 25 per cent—to 36½ cents per 100 pounds. This advanced rate was continued in effect until the 17th day of February, 1907, when it was reduced to the former rate, where it stands to-day. Upon that statement we must hold that the rate charged the complainant was excessive. The fact that the defendant had for some time maintained a rate of 29 cents and has since reduced its rate to the same figure is in the nature of an admission upon its part that this rate is a fair one, unless explained.

The defendant undertakes to explain it by saying that snapped corn and shelled corn had previously taken the same rate; that the advance was for the purpose of establishing a higher rate upon snapped corn, and that this ought to be done because the transportation of snapped corn is more expensive owing to lighter loading and less value, and should properly bear a higher charge.

We do not hold that the defendant may not properly apply a somewhat higher rate to the transportation of snapped corn than to shelled corn. Ordinarily corn is shelled before being shipped, but there seems to be some peculiar reason why in this locality it is shipped frequently in the shuck. Whether under all the circumstances the rates ought to be the same is a question upon which no opinion is expressed.

If this defendant, instead of advancing its rate on snapped corn, had reduced that upon shelled corn and the complainant had then insisted that he was entitled to the same reduction upon corn in the husk as when shelled, this question would be presented fairly; but the mere fact that the rate upon snapped corn and shelled corn ought not to be the same, if so found, would not show that the existing rate on snapped corn was too low.

We hold that the rate charged the complainant was excessive, that a rate of 29 cents per 100 pounds was just and reasonable, and that the complainant is entitled to recover \$58.36, with interest from September 13, 1907, the date of filing the complaint. It does not clearly appear from the testimony when the freight money was actually paid.

No. 729.

RELIANCE TEXTILE & DYE WORKS.

v.

SOUTHERN RAILWAY COMPANY; GEORGIA RAILROAD COMPANY; CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY; NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; CENTRAL OF GEORGIA RAILWAY COMPANY; WESTERN RAILWAY OF ALABAMA; CHATTAHOOCHEE VALLEY RAILROAD COMPANY; ATLANTA & WEST POINT RAILROAD COMPANY; SEABOARD AIR LINE RAILWAY, AND ATLANTIC COAST LINE RAILROAD COMPANY.

Submitted November 12, 1907. Decided December 2, 1907.

1. The rate on cotton piece goods from certain producing mills in the South to nearby dye works and from the dye works to Chicago is less than the combination from the mill to the dye works of the complainant at Cincinnati and from thence to Chicago. This is for the reason that the rate from southern mills to Chicago through Cincinnati is less than that to Cincinnati plus the local from Cincinnati, and this is due to the fact that the rate from southern mills to Chicago is competitive with that from New England; *Held*, That while the better combination in favor of the southern dye works may be a discrimination against the works of the complainant, it is not, under all the circumstances, undue and therefore unlawful.
2. Where a discrimination results from the combination of a state and an interstate rate, both established by the same carrier, the matter is not withdrawn from the jurisdiction of this Commission by the fact that the discrimination is produced by an improper state rate—certainly not when the state rate is voluntarily made by the carrier.

E. P. Wilson and E. E. Williamson for complainant.

Ed. Baxter and Claudian B. Northrop for Southern Railway Company and Cincinnati, New Orleans & Texas Pacific Railway Company.

Ed. Baxter for Georgia Railroad Company, Nashville, Chattanooga & St. Louis Railway Company, Louisville & Nashville Railroad Company, Central of Georgia Railway Company, Western Railway of

Alabama, Atlanta & West Point Railroad Company, Seaboard Air Line Railway, and Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The original petition in this case was filed December 9, 1903. A large amount of testimony was taken during 1904 and 1905, and the case was finally submitted on brief August 14, 1906. Under the rulings of the Commission no order could be made upon the record thus presented after August 28, 1906, without opportunity to all parties for further hearing. August 21, 1907, the complainant filed a petition asking that the case be reopened and further proceeded with. This petition was granted and the case was further heard November 12, 1907, all the parties being represented by counsel. No party desired to introduce additional testimony, and the case was therefore submitted upon oral argument and now stands for disposition.

Most mills in the States of South Carolina, Georgia, and Alabama weave cotton cloth from yarns which have not been dyed. The gray cloths produced at these mills are subsequently treated at bleacheries or dye works, sometimes being whitened and perhaps stiffened, and sometimes colored by dyeing. This process, which is called converting, is seldom, if ever, performed at the mill where the goods are woven. It would appear that these cotton piece goods are generally handled from the mill by commission houses and that these houses are often interested in the bleacheries or dye works at which the process of converting is carried on. The complainant in the present case is a Kentucky corporation, whose stock is controlled by the large commission firm of Putnam-Hooker Company, for many years located at Cincinnati, Ohio.

The complainant operates dye works for the treating and coloring of these cotton fabrics. Our understanding is that these works are located at Covington, Ky., but the base of its operations has been continually spoken of in this hearing as Cincinnati, and since the rates to Covington and Cincinnati are the same, we shall in this report treat its location as Cincinnati. The complaint is that freight rates are so adjusted as to discriminate against the works of the complainant in comparison with certain similar establishments at Clearwater, S. C., and Lanette, Ala. The claim of the complainant will be best understood by one or two practical illustrations.

The rate on cotton piece goods from all points in Georgia and Alabama to Chicago is 55 cents per 100 pounds, to Cincinnati 49 cents. From South Carolina mills the rate to Chicago is 65 cents, to Cincinnati 59 cents. The local rate from Cincinnati to Chicago is 25 cents per 100 pounds.

These fabrics, which are produced in the South, are very largely sold for shipment to points north of the Ohio River, of which Chicago is much the largest consumer and may be taken as typical of the whole. While Clearwater is actually in the State of South Carolina, it is just across the river from Augusta, Ga., and takes, along with some other mills in that immediate vicinity, the Georgia rate on cotton fabrics. The Southern Railway establishes a rate of 17 cents per 100 pounds from all South Carolina mill points to Clearwater upon cotton piece goods.

If we take, now, some point in South Carolina, the combination would be as follows:

	Cents.
From the mill to Cincinnati.....	59
From Cincinnati to Chicago.....	25
Total	84
From the mill to Clearwater	17
From Clearwater to Chicago.....	55
Total	72

This gives Clearwater an advantage in the rate of 12 cents per 100 pounds.

It was said that from many points the rate to Lanette was 8 cents per 100 pounds. Taking such a point, the following combination results:

	Cents.
From the mill to Cincinnati.....	49
From Cincinnati to Chicago.....	25
Total	74
From the mill to Lanette.....	8
From Lanette to Chicago.....	55
Total	63

This shows an advantage in favor of Lanette of 11 cents per 100 pounds.

It is evident that from points where the rate to Lanette or Clearwater is as given above the transportation advantage is against the complainant, as claimed by it.

The reason for this is found in the fact that the through rate from the southern mill to Chicago is less than the combination upon the Ohio River. Ordinarily rates from points in the South to destinations north of the Ohio River are determined by adding together the rate to the River and the rate from the River. If the Chicago rate on cotton piece goods were constructed in this manner, it would be from Georgia and Alabama to Chicago 74 cents instead of 55, and from South Carolina 84 instead of 65.

Upon further examination we are told that in case of cotton piece goods the through rate is established by naming a base rate to the Ohio River, which is 35 cents from Georgia and Alabama and 45 cents from South Carolina. It also appears that the rate from the Ohio River is shrunk 5 cents by the northern lines, being 25 cents when the shipment is local, 20 when it is through. The line leading up to the Ohio River receives 35 cents for its through haul and the line from the Ohio River 20 cents, while on local business the line to the River receives 49 cents and that from the River 25 cents.

It has been said that ordinarily rates from points in the South to destinations in the Middle West are constructed by the combination upon the Ohio River, but to this rule there are many exceptions besides cotton piece goods. In no other case, however, which was called to our attention is the difference between the local rate and the base rate from the southern point to the River as wide as 14 cents.

The complainant points out that this wide discrimination between the rate to Cincinnati for beyond and to that same point for local consumption is what creates the prejudice against it, and asks the Commission to reduce that disparity. The defendants reply that these rates from the South to Chicago and Cincinnati on cotton piece goods are forced by competition, and that, therefore, while the discrimination may exist it is not undue.

It is well known that the manufacture of cotton piece goods was originally confined almost entirely to New England and the East. Gradually this industry developed in the South, and to-day the production there is fully equal to that in the North. The product of these southern spindles could be sold, to some extent, in the South, but the principal prospective market lay in the great and populous Middle West, and when these southern mills began their struggle for existence they appealed to the railroads leading from the South into that territory for a rate which would put them upon an equality with New England. This claim of the southern weaver was recognized by the railroad, and rates to Chicago, which was the largest consuming point, were made the same from a large section of the South that they were from New England. The rate to-day from New England mills to Chicago is 55 cents, and from southern mills in Georgia and Alabama the same.

The complainant insists that while the carriers may labor under the impression that this so-called competition exists, that impression is an erroneous one, for the reason that the character of the goods manufactured in the South and in New England is so utterly dissimilar that they do not come into competition at all. He states, in substance, that the fine goods are made in New England, the coarser grades in the South, and that while the product of New England mills may compete with that of southern mills in the West in some

few instances, that competition is not sufficient to justify the adjustment of rates in effect.

The principal witness who testified upon this point has enjoyed long experience with this cotton industry, has seen the mills of the South develop, and is thoroughly familiar with the character of the production of those mills as well as the mills in New England. It is quite probable that what he says is, in the main, true to-day. Originally it was not true, for all cotton fabrics were made in the North, and in the beginning there must have been direct competition between the cotton factory in the South and that in the North. It is only after a struggle of years that the cotton mills of the South have demonstrated their ability to manufacture for the market in the Middle West cotton piece goods of a certain kind more advantageously than they can be made at New England mills. In establishing this fact it is quite probable that the low freight rates which southern lines established have been necessary, and it is further probable that a continuation of these rates may reasonably be demanded by southern mills in holding that business. There must always be competition between New England and the South, for either section is always ready and willing to invade the territory of the other when it can do so to advantage.

That this Chicago rate is competitive is shown by comparing it with class rates. Cotton piece goods take the regular class rate from New England points to Chicago. In Southern Classification cotton piece goods are fourth class, and this class rate from Atlanta to Chicago is 97 cents. Here, therefore, competition has produced a shrinkage of 42 cents per 100 pounds from the regular class rates.

This through rate from southern mills to Chicago has been demanded by southern factories as necessary to meet New England competition. It has been conceded by the railways carrying this traffic as necessary for that purpose. Southern mill owners still make the same demand and these railways still grant the same concession. Under these circumstances we must find that this rate is in fact a competitive rate, and we can not find that it is materially lower than competitive conditions fairly require.

The defendants claim that the rate to Cincinnati from southern mills is also competitive with that from New England. Rates on cotton piece goods from New England points to various Ohio River crossings and East St. Louis are as follows:

	Cents.
Cincinnati	48
Louisville	55
Evansville	61
Cairo	66
East St. Louis	64

From southern points the rates are the same, 49 cents, to all Ohio River crossings, being 1 cent higher to East St. Louis. It will be seen, therefore, that the southern mill has a very substantial advantage at these points over the eastern mill, except at Cincinnati.

Cincinnati is an important point for the distribution of cotton piece goods; its location is such that the same competitive conditions might well exist there as at Chicago. The class rate which would carry cotton piece goods under the Southern Classification is 68 cents from Atlanta to Cincinnati, showing a concession of 19 cents to this commodity from the regular rate. It would seem probable that the same conditions which require substantially the same rate from New England and the South to Chicago would obtain at Cincinnati.

The disparity between the rate to the Ohio River for local consumption and that for beyond is wider than it should be in the absence of some justifying reason, but we are constrained to hold that this relation is justified by the competitive stress under which these rates from the South have been made. This being so, we do not think that these railroads ought to be required to disturb this relation for the simple purpose of removing discrimination against the business of this complainant. Such discrimination would not be, under all the circumstances, undue. It would be unreasonable to require these defendants to reduce all their rates to the Ohio River simply that the complainant may locate its dye works at Cincinnati rather than at some point north of the river to which a through rate applies or at some point south of the river from which a through rate is in effect. We hold, therefore, that the disparity in rates against which this complaint is directed is not unlawful.

The complainant also urges that this same discrimination in rate results from the making of unduly low rates by the defendants from mills in the South to the southern dye works at Clearwater and Lannette. In determining whether the complainant does business upon a corresponding freight charge with its competitor the rate from the mill to the southern plant and thence to Chicago must be compared with the rate from the mill to the plant of the complainant and thence to Chicago.

The complainant alleges that the defendants, or some of them, who participate in these through rates to Chicago and to the Ohio River have made unduly low local rates from the producing mill to the southern dyeing establishment. That one upon which the complainant seems to dwell more than any other is a rate of 17 cents per 100 pounds from South Carolina mills to Clearwater. Clearwater is situated in the State of South Carolina, although it takes the rate applicable to Georgia points, and since these low rates from the mills to

Clearwater are state rates, the defendant insists that we have no jurisdiction of this aspect of the case.

To this we can not agree. The same lines participate in all these rates from the mill to the dye works of the complainant and its competitor, and from these in turn to the points of consumption. When a discrimination, forbidden by the act to regulate commerce, arises from an adjustment of state and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates can not escape responsibility by claiming that the discrimination is accomplished through a reduction of the state rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.

The Southern Railway, for example, names the rate from the producing mill in South Carolina to the works of the complainant at Cincinnati, and it also names the rate from the same mill to the Clearwater works in South Carolina. Its duty is to treat, in the matter of transportation, both these operations with fairness. It can no more shut up the industry of the complainant by unduly reducing the state rate made to its competitor than by unduly advancing the interstate rate which the complainant itself is required to pay.

This must certainly be so where the state rate is voluntarily made, and we think that the same conclusion must finally be reached where the state rate is made by state authority. A state can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest.

It must not be inferred, however, that railway companies have no right to make rates which foster enterprises upon their own systems, even though the result is to discriminate against other enterprises of a similar nature elsewhere, provided such discrimination is not, on the whole, undue.

Originally all cotton was spun in the north, but there came a time when mills began to be constructed in the south. Even after cotton goods were woven in the south they continued to be converted in New England. Finally, however, this complainant established its works at Cincinnati. Now, these carriers might, within reasonable limits, promote the enterprise of the complainant; they might, for example, have decreased the disparity between the through rate and the local combination, or have given the complainant some sort of a dyeing-in-transit privilege. It was in the interest of economy that these goods should be taken to Cincinnati, dyed, and sent on to Chicago, rather than that they should be carried up to New England and thence sent to Chicago. The defendants might not

make unjustly discriminatory rates for that purpose, but New England had no continuing lien upon the right to dye these fabrics.

As time went on southern manufacturers conceived that these goods should be dyed in the south, in closer proximity to the mills where they are manufactured. It is said in this testimony that there are certain reasons why this can be better done in that way. The attempt was made, and for the purpose of encouraging that attempt, to establish the enterprise in that section, these railroads made rates lower than their ordinary class rates into these dye works. This was not necessarily an unlawful discrimination against the complainant; within proper bounds it was the right and privilege of these railroads to foster these industries. It was, if the testimony is true, in the interest of the public as a whole that the business should be done in that way. In order to say, therefore, that these defendants are guilty of unlawful discrimination in the making of rates to these southern dye works, it must appear that the discrimination is undue.

We have examined the testimony upon this point with care. Most of these rates are lower than the class rate, but they are not abnormally low, and we do not think, on the whole, that they can be said to create an undue discrimination against the complainant in favor of these southern dye works.

This impression is somewhat confirmed by the fact that those industries do not seem to be, in comparison with the complainant, unduly prosperous. The dye works at Clearwater discontinued business entirely in the spring of 1907, and is no longer operated as a converting plant. The works at Lanette are running at something less than one-half their capacity, being in this respect even worse off than the works of the complainant. While the fortune of these enterprises is not, of course, conclusive—for their want of success may be due to other causes than the rate—it is certainly testimony which must be considered by us.

The discrimination in rates against which this complainant contends results from commercial and traffic conditions which render the location of the complainant's works unfortunate, but we must hold that this discrimination is not undue and therefore unlawful under the act to regulate commerce.

The complaint will be dismissed.

13 I. C. C. Rep.

No. 1098.

BOVAIRD SUPPLY COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
SOUTHERN PACIFIC COMPANY; SAN PEDRO, LOS
ANGELES & SALT LAKE RAILWAY COMPANY; UNION
PACIFIC RAILROAD COMPANY; CHICAGO, ROCK
ISLAND & PACIFIC RAILWAY COMPANY; ST. LOUIS &
SAN FRANCISCO RAILROAD COMPANY, AND MIS-
SOURI PACIFIC RAILWAY COMPANY.

Submitted December 16, 1907. Decided January 13, 1908.

1. A rate of 75 cents per 100 pounds on rope in carloads from San Francisco, California, to Independence, Kansas, is not shown to be unreasonable.
2. Erroneous application of an unlawful rate is not evidence that a higher lawful rate thereon is unreasonable.
3. A rate to one point that does not permit of disadvantageous competition from a point beyond enjoying a lower rate does not create unreasonable prejudice as to the one or give undue preference to the other.
4. The Commission views with disfavor the maintenance of a lower rate for a longer haul than for a shorter one included within the longer, and the circumstances and conditions obtaining at the more distant point which are relied upon to justify it must not only be clearly shown to be substantially dissimilar from those prevailing at the nearer point, but also to clearly exercise a potent or controlling influence in making the lower rate.
5. If the influence of competition between points of production, in commodities, between carriers, and in rates prevailing at the farther distant point, but not at the nearer one, controls the establishment of a lower rate to the former, it will constitute such dissimilarity of circumstances as will justify the lower rate for the longer haul.
6. Competition in commodities alone, at the nearer point, will not make the circumstances there substantially similar to those at the farther point where the other competitive influences and conditions also prevail.

13 I. C. C. Rep.

7. Dissimilar circumstances which justify under section 4 a greater charge for a shorter than for a longer haul will also prevent such rate from constituting an illegal preference or advantage under section 3.
8. Upon discovery that shipments have through mistake been moved at an unlawful rate the carrier should forthwith demand and the shipper forthwith pay the difference between such unlawful rate and the legal rate applicable thereto.

John M. Cleary and Francis E. Downey for complainant.

M. A. Low for Chicago, Rock Island & Pacific Railway Company.

Thomas R. Morrow for Atchison, Topeka & Santa Fe Railway Company.

R. W. Blair for Southern Pacific Company and Union Pacific Railroad Company.

James C. Jeffery for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant corporation is engaged in the manufacture of drilling tools, and in connection therewith sells rope cables for drilling purposes, which it buys in and ships from San Francisco, Cal., to Independence, Kans., its principal place of business, and to other points in Kansas and in other states. Defendants are engaged in the transportation of property by continuous carriage as their various lines may run between the same points.

The rate on rope from San Francisco to Independence is 75 cents per 100 pounds in carloads, minimum weight 30,000 pounds. (Supplement No. 32, Trans-continental East Bound Tariff 3-E, I. C. C. 318, effective February 24, 1906.) The rate on rope from San Francisco to Missouri River common points, including Kansas City, Carthage, and Joplin, Mo., and Fort Smith, Ark., and to Mississippi River common points, Chicago and common points, is 60 cents per 100 pounds in carloads, minimum weight 30,000 pounds. (Trans-continental East Bound Tariff 3-E, I. C. C. 318, effective October 12, 1903.)

Complainant contends that the 75-cent rate is unjust and unduly prejudicial to it, to Independence, and to the traffic in said commodity; that the maintenance of the 60-cent rate to the farther distant points mentioned, where some of the traffic moves through Independence, is unjustly discriminatory to the latter and unduly preferential to such farther distant points. The Commission is asked to fix a reasonable rate to Independence and to forbid the unjust discrimination against it and the undue preference in favor of the other points.

Independence is located in Montgomery County in the southeastern corner of Kansas at a junction of the Missouri Pacific and Atchison, Topeka & Santa Fe railways. The short-line mileage from San Francisco to Independence is 2,041 miles; to Kansas City 2,012.5 miles; to Joplin 2,126 miles; to Fort Scott 2,111 miles, and to Fort Smith 2,298 miles. Independence is approximately 60 miles west of the western boundary line of Missouri River common-points territory, as defined in the tariff above referred to, and has never been included therein. The complainant also claims that Fort Scott is a Missouri River common point, and all defendants, except the Santa Fe, admitted that in their answers, but at the hearing the other defendants stated that the admission was made through inadvertence, and the tariff governing the rates in controversy shows that Fort Scott is not in that territory, but that it takes the 75-cent rate.

Independence is near the center of the mid-continent oil and gas field, which is the largest producing oil and gas region in the United States. The discovery and development of these resources are of recent date. The field in question extends from Independence south to Sapulpa, Ind. T., a distance of about 125 miles, but its width does not appear. Rope cable is one of the principal utilities used in drilling oil and gas wells, and Independence is the principal place that supplies rope-drilling cables to the consumers in that field. The nearest oil and gas field of any consequence is in Illinois at the towns of Casey, Charleston, Robinson, and Urbana. They are approximately 500 miles east of Independence.

Rope used for drilling purposes in the mid-continent oil and gas field is manufactured on the Atlantic seaboard at New York, Brooklyn, and Philadelphia, and on the Pacific coast at San Francisco. There is but one plant in San Francisco that produces rope cable of the kind used in the mid-continent oil and gas field. The following table shows the lowest rates on rope in cents per 100 pounds in carloads, minimum weight 30,000 pounds, all rail and rail and water from New York, Brooklyn, and Philadelphia to points of destination named therein:

To—	From New York and Brooklyn.		From Philadelphia.	
	All rail.	Rail and water.	All rail.	Rail and water.
Independence, Kans.....	87	88	85	83
Fort Scott, Kans.....	67	63	65	63
Carthage, Mo.....	70	66	68	66
Joplin, Mo.....	70	66	68	66
Kansas City, Mo.....	62	58	60	58
Fort Smith, Ark.....	77	70	75	69

Prior to 1903 the rate on rope from San Francisco to Missouri River common points was \$1.10 per 100 pounds in carloads, minimum weight 30,000 pounds. This was much higher than the rate on the same commodity from the Atlantic seaboard to such common points, and at the request of the manufacturers in San Francisco the trans-continental lines established the 60-cent rate hereinbefore referred to, and gave places west of Missouri River common-points territory the Missouri River rate plus the local from the nearest Missouri River common point to the point of destination. Under that rule the rate from San Francisco to Independence was 91 cents per 100 pounds in carloads, and very little rope moved under it to points west of Missouri River common points. At the further request of the manufacturers in San Francisco defendants established the 75-cent rate to Independence, which is complained of.

Complainant is the only one in Independence and the territory tributary thereto that handles San Francisco rope. All others sell the eastern product. The wholesale and retail prices of the eastern commodity are, respectively, $12\frac{1}{4}$ and $14\frac{1}{2}$ cents per pound; of the western commodity, $13\frac{3}{4}$ and $16\frac{3}{4}$ cents per pound. Under these prices complainant has handled over \$60,000 worth of the western rope within the year ended October, 1907.

The local rates to Independence from Kansas City, Joplin, Carthage, Fort Scott, and Fort Smith are 31, 41, 39, 34, and 45 cents per 100 pounds, respectively, in carloads. The lowest rate on rope from any of these points to Independence, when added to either the rate from the Atlantic seaboard or the Pacific coast to such points, is 16 cents per 100 pounds higher than the rate from San Francisco to Independence. The lowest rate from the Atlantic seaboard to Independence, Kans., is the rail and water rate of 83 cents per 100 pounds. The secretary and treasurer of complainant admits that no dealer enjoying the 60-cent rate on rope competes to the disadvantage of complainant in the mid-continent oil and gas field.

Casey, Robinson, Urbana, and Charleston, Ill., take the 60-cent rate on rope from Pacific coast terminals under Trans-continental East Bound Tariff referred to, and, except as to geographical location, it is admitted that physical conditions that influence the making of a rate are practically the same at Joplin and Carthage, Mo., Fort Smith, Ark., Casey, Robinson, Urbana, and Charleston, Ill., and Independence, Kans.

Shipments of rope from San Francisco to Joplin, Mo., and to Fort Smith, Ark., are the only ones that would pass through Independence over the defendants' lines, and such shipments would be carried over the lines of the Atchison, Topeka & Santa Fe and Missouri Pacific railways. All other shipments would take different routings. No

shipments of rope from Pacific coast terminals to Fort Smith, Fort Scott, or Joplin were made by the Atchison, Topeka & Santa Fe Railway Company during the year 1906 or the first part of the year 1907, and there is no testimony that shipments were made to said points over any of the other defendant lines.

Defendants justify the lower rate to the points through and beyond Independence on the ground that it is warranted and brought about by competition in the two commodities; that is, eastern rope against western rope, and competition in rates in the competing territory of said commodities; and that such rates were established for the purpose of putting the western product on practically an equal footing with the eastern product in Missouri River common-points territory. It is admitted, however, that the rate of 32 cents per 100 pounds on said commodity from the Atlantic seaboard to Robinson and 33 cents per 100 pounds to Charleston, Casey, and Urbana, Ill., is not met by the 60-cent rate on the western commodity from Pacific coast terminals to those points, and it is stated that the 60-cent rate to those points is not remunerative. It may be that this rate is carried along to the Illinois points under the plan upon which this tariff is constructed and which, in general, blankets the rates over the territory between Missouri River and Chicago common points. It, however, contains exceptions to this rule, and if this rate on rope to points east of Missouri River common points is not remunerative, or is a paper rate that is not used, it would seem better if it were eliminated from the tariff.

Complainant shipped one car of rope in September, 1906, from San Francisco to Independence over the Atchison, Topeka & Santa Fe Railway, for which said company exacted the legally published rate of 75 cents per 100 pounds. Following that, in October and November, 1906, complainant shipped two more cars of the same commodity via the lines of the Atchison, Topeka & Santa Fe and Missouri Pacific railways, the latter being the delivering carrier, and it exacted from the complainant a rate of 60 cents per 100 pounds. It appears that prior to these shipments complainant had been advised by employees of the Missouri Pacific and Atchison, Topeka & Santa Fe railways that the Missouri River common-points rate applied to Independence, and it further appears that the representative of the Missouri Pacific Railway had taken the matter up with the head of the traffic department of that railway and that the rate was so confirmed. Afterwards the representative of the Missouri Pacific advised complainant that his traffic department then held that the 60-cent rate was not applicable to Independence and following that the agent of the Missouri Pacific at Independence advised complainant

that he had for collection expense bills for the two shipments in question to cover the 15-cent per 100 pounds undercharge on each of the cars. Complainant refused to pay the defendant until it was determined what the legal rate was.

Complainant contends that the acts complained of violate the first four sections of the act to regulate commerce.

Section 1 provides that the charges established and exacted for services in the transportation of property shall be just and reasonable.

There is no evidence showing that the rate on rope from San Francisco to Independence, of 75 cents per 100 pounds in carloads, minimum weight of 30,000 pounds, is unjust and unreasonable in and of itself. The short-line mileage between the points mentioned is 2,041 miles, and the compensation at that rate for that distance is 7.34 mills per ton per mile. This is lower than the average earnings per ton per mile of the leading western railroad lines for the year 1906.

In support of the alleged unreasonableness of the present rate complainant asserts that a 60-cent rate on rope at one time applied to Independence from Pacific coast terminals. No published tariff shows such rate.

The application of the 60-cent rate by the Missouri Pacific Railway on the two shipments of rope from San Francisco to Independence in October and November, 1906, is cited as evidence of the unreasonableness of the 75-cent rate. The 60-cent rate was erroneously applied, and such application of an unlawful rate to a given point is not evidence that a higher lawful rate to the same point is unjust or unreasonable.

Section 2 of the act forbids unjust discrimination by carriers between shippers. No fact has here been shown to bring the acts complained of within the operation of this section.

Undue preference in favor of or unreasonable prejudice and disadvantage to the classes mentioned in section 3 of the act have not been shown.

The evidence is without dispute that no dealer operating in the territory tributary to Independence can get his rope therein at a better rate than complainant, and as the latter sells exclusively the western product, it has the advantage of the lower rate over the dealers handling the eastern commodity, whether located in that territory or elsewhere. From San Francisco to Independence the rate on rope is 8 cents per 100 pounds lower than the rail and water rate and from 10 to 12 cents per 100 pounds lower than the all-rail rate from the Atlantic seaboard. It is conceded that no dealer in Missouri River

common-points territory can sell rope in complainant's territory on an equality of rate unless such dealer handles the western product and ships direct to Independence at the 75-cent rate. If a dealer at any point in Missouri River common-points territory ships from either the eastern or the western point of production to such Missouri River common point and then attempts to enter the Independence territory in competition he finds himself at a disadvantage as compared with the dealer who ships direct from San Francisco to Independence.

Joplin, Mo., and Fort Smith, Ark., are the only points mentioned as taking the lower rate which are farther distant from San Francisco than Independence and to which shipments would pass through Independence. The short line mileage from San Francisco to Kansas City is less than to Independence and shipments thereto would not move through Independence.

A less charge for a longer distance haul than for a shorter one, where the latter is included within the former, is not unlawful under section 4 of the act, if there is substantial dissimilarity of circumstances and conditions. Competition between carriers at the more distant point may create substantial dissimilarity of circumstances. A commodity may be produced at two points widely distant from each other and different carriers may serve the different points. The commodity from one point of production may meet that from the other in competition in a common territory between the two points. If the carriers serving the one point of production make a reasonable and remunerative rate therefrom to the common field of consumption, the other producing point may be given equality of rate to the common competing territory by the carriers serving such point of production, if such equalizing rate is reasonable and remunerative. Under such circumstances, there is competition between points of production, in products, between carriers, and in rates.

Rope of the character used in the mid-continent oil and gas field is manufactured at New York, Brooklyn, and Philadelphia, on the Atlantic seaboard, and at San Francisco, on the Pacific coast. The same carriers do not serve the widely separated points of production. There are no plants of this character in the interior. Each plant is supplied with raw material in the form of hemp from the same sources—Yucatan, New Zealand, and the Philippine Islands. As the points of manufacture are at the extremes of the country, manifestly, of necessity, somewhere between the two there must be a common territory of competition for the two products. Ocean rates from points of production of the raw material being available to each manufacturer, it follows that the rail or rail and water rates

from the respective points of manufacture to the interior determine, so far as the question of transportation is concerned, where the common competitive territory between the points of manufacture begins and ends. Competition between carriers may influence the extent of this common competitive territory of consumption, but that influence has its limits. In competition, and with their desire for business, carriers serving their respective points of manufacture may carry therefrom as far as remunerative rates will permit.

Remunerative rates are referred to in the sense that the competitive rate yields some profit above the cost of service, and it may be that competition should not be permitted to the extreme of that sense if equipment needed elsewhere is thereby diverted from more advantageous uses.

In the present case the various circumstances, conditions, and influences mentioned have fixed the common competitive market for the eastern and the western rope in Missouri River common points territory. When western rope sought this field of consumption, eastern rope was already sold there, and the present rates thereon from the Atlantic seaboard were in existence. The rate from San Francisco was much higher. The western railroads desired to compete with eastern carriers in transporting rope to that territory and, by reducing the rate from San Francisco to equal the rate from the east, they adopted the only means of procuring that business. The defendants lowered their rates on rope from San Francisco to Missouri River common points in order to haul a commodity from a competing point of production to a competitive point of consumption in competition with eastern carriers hauling the same commodity from a different competitive point of production to the same territory under a lower competitive rate.

The competition of the eastern carriers and their lower rate undoubtedly controlled the defendants in making the 60-cent rate to the Missouri River. The eastern rates to the Missouri River create actual and existing competitive conditions of railroad rates on rope in that territory, only to be met by the present 60-cent rate from the West. The lowest rate on rope from the Atlantic seaboard to any point in Missouri River common points territory was to Kansas City, a Missouri River crossing; and in making a rate on that commodity from San Francisco that would compete with the eastern rate it had to be as low as the lowest rate from the east; therefore, the 60-cent rate was established, which is 2 cents per 100 pounds less than the all-rail rate and 2 cents per 100 pounds higher than the rail-and-water rate from the Atlantic seaboard to Kansas City. Kansas City being

a Missouri River common point, the rate was, in accordance with the custom of western carriers in the application of rates, applied to all other points within that common point territory.

The rates from the Atlantic seaboard to Missouri River common points territory do not extend to the territory west of Missouri River common points territory, undoubtedly due to the fact that eastern carriers had no desire to carry a farther distance for that rate.

When the rates on eastern and western rope to points west of Missouri River common points territory were compared it was found that so far as they related to Independence the all-rail rate from the Atlantic seaboard was 4 cents per 100 pounds lower and the rail and water rate 8 cents per 100 pounds lower than the rate from San Francisco. There are no rail and water rates from San Francisco to Independence. The competitive conditions here were the same as when the rate on the western commodity was made to meet the rate on the eastern commodity in Missouri River common points territory, and defendants made a similar reduction in the rate from San Francisco to Independence which gave the dealers in Independence and at other points in that territory the same relative advantage in favor of the western rate which is possessed by dealers in Missouri River common points territory. The 75-cent rate from San Francisco to Independence so established is 12 cents per 100 pounds lower than the all-rail rate and 8 cents per 100 pounds lower than the rail and water rate from the Atlantic seaboard to Independence.

Complainant admits that no competition in rope exists between Missouri River common points territory and Independence. It contends, however, that competition between eastern and western rope at Independence creates circumstances and conditions at Independence similar to those that exist at Missouri River points. Competition in commodities alone, however, is not a circumstance that will entitle it to have an already lower rate made still lower to equal one at a more distant point which was made to meet competition of carriers and of rates as well as of markets and products.

In general the Commission views with disfavor the maintenance of a lower rate for a longer haul than for a shorter one included within the longer, and the circumstances and conditions obtaining at the more distant point which are relied upon to justify it must not only be clearly shown to be substantially dissimilar from those prevailing at the nearer point, but also to clearly exercise a potent or controlling influence in making the lower rate. Invoking this rule to its fullest extent, we are of the opinion that the circumstances and conditions prevailing at Independence with regard to the transportation herein

considered are so clearly dissimilar from those existing in Missouri River common points territory that the higher rate to Independence is not in violation of section 4 of the act.

The views herein expressed are in harmony with former decisions of the Commission. In *Lehmann, Higginson & Co. v. Southern Pacific Co. et al.*, 4 I. C. C. Rep., 1, it was held that a lower rate on sugar from San Francisco to Kansas City than to Humboldt, Kans., was not in violation of the third and fourth sections of the act, by reason of circumstances and conditions at Kansas City that were substantially different from those prevailing at Humboldt; that competition between points of production, in commodities, between carriers and in rates were elements which entered into and created the substantial dissimilarity in conditions, as well as the fact that no competition was found to exist between Humboldt and Kansas City; that Kansas City could not compete in that product in the territory tributary to Humboldt to the disadvantage of the latter. Humboldt was not situated upon a direct line between Kansas City and San Francisco, so that the question decided was under the third rather than the fourth section, but the Commission in deciding that the lower rate might properly be made to Kansas City determined that circumstances and conditions at the latter point were substantially different.

This holding was approved in *Kindel v. Atchison, Topeka & Santa Fe Ry. Co. et al.*, 8 I. C. C. Rep., 626. This case involved the legality of higher freight charges from San Francisco to Denver than to Missouri River common points and points east thereof, and from and to many other points. The Commission held, generally, that the rates complained of were in violation of the third and fourth sections of the act to regulate commerce, but excepted from the ruling the rates on sugar from San Francisco to Missouri River common points that were lower than the rates from San Francisco to Denver. The Commission found that raw sugar was grown in the Hawaiian Islands and from there it might be taken to either San Francisco or the Atlantic seaboard for refining; that the cost of refining was somewhat less upon the Atlantic seaboard than upon the Pacific coast; that the transportation from Honolulu to New York did not greatly exceed that to San Francisco; that the refined products cost about the same at the two places; that the rate from San Francisco to the East determined whether it would be refined at and distributed from San Francisco or from some eastern point; that the lower rate from San Francisco to Missouri River common points was necessary to induce the product to pass via San Francisco from point of origin to point of consumption in Missouri River common points territory. In view of these facts, it was said by the Commission that refining

plants being in operation on the Pacific coast and the trans-continental lines needing revenue, the latter could make something out of this traffic at the lower rate; that as Denver was not competing in this article with Missouri River common points territory, the carriers might meet this competition at the Missouri River without regard to intermediate rates to Denver; that the circumstances and conditions under which the traffic moved were substantially different when it was carried to Missouri River points than when it stopped at Denver. In referring to the Lehmann case, *supra*, the fact that Kansas City could not compete in the Humboldt territory even though it enjoyed a lower rate was especially noticed.

A further consideration of the Kindel case, *supra*, was had in 9 I. C. C. Rep., 606, which determined the specific commodities that should bear no higher rate from San Francisco to Denver than to Missouri River common points, and the general view adopted in the first consideration thereof was adhered to; however several other articles, among them hemp, were decided to be within the same rule that governed the rates on sugar, and the principle was clearly recognized that competition between points of production, of products, between carriers and in rates, are matters that constitute such dissimilarity in conditions as will prevent the lower rate to the more distant point from violating the fourth section of the act. To the same effect see *Dallas Freight Bureau v. Austin & Northwestern Railroad Co.*, 9 I. C. C. Rep., 71.

It may be observed in this connection that dissimilar circumstances which justify a greater charge for a shorter than for a longer haul under section 4 will also prevent such rate from constituting an illegal preference or advantage under section 3.

It is suggested in argument that the price of eastern rope is lower than western rope. This is undoubtedly true, but the Commission has nothing to do with the prices paid for this commodity by dealers in or consumers of it. If the eastern manufacturer can sell his product lower than the western manufacturer at the point of production, it is his good fortune and the Commission should not be expected to equalize that difference by a further reduction in the transportation rate on the Western product to the point of consumption which is already lower than the eastern rate.

The system of group rating is attacked by complainant, but it has uniformly been held by this Commission that a group rate of the nature complained of will not be disturbed or be held to constitute an undue preference, unreasonable prejudice or unjust discrimination without proof of tangible injury resulting to the complainant.

As before observed, it is clear that in this case this group rating has not operated to the disadvantage of the complainant.

The shipments of rope made by complaint over the line of the Atchison, Topeka & Santa Fe and the Missouri Pacific railways, for which the Missouri Pacific Railway collected from the complainant 60 cents per 100 pounds on November 11 and December 11, 1906, as shown by Complainant's Exhibits Nos. 1 and 2, were clearly moved at an unlawful rate, but as the testimony shows that the shipments were carried and the rate collected and paid with all parties acting in good faith, the defendant, the Missouri Pacific Railway Company, should forthwith demand and the complainant forthwith pay the 15 cents per 100 pounds undercharges on these two shipments.

The complaint herein should be dismissed.

13 I. C. C. Rep.

No. 954.

MUSKOGEE COMMERCIAL CLUB AND MUSKOGEE
TRAFFIC BUREAU

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Submitted November 1, 1907. Decided December 10, 1907.

Complainants' motion for rehearing in this proceeding denied.

L. J. Roach and C. M. Bradley for complainants.

C. L. Jackson for defendant.

REPORT ON MOTION FOR REHEARING.

LANE, *Commissioner*:

In this matter a petition has been presented asking that a further order be made by the Commission by which certain advantages alleged to accrue to the Lesser-Goldman Company by reason of their controlling ownership of the compress at McAlester should be overcome. The Commission has determined, in view of the largeness of the questions involved and of the number of compresses, communities, and carriers which would be affected by such an order, to hold a general inquiry into the question of compression, in which the relation between the railroads, compresses, and buyers and shippers will be investigated, looking also to the interest of the grower, in which it is hoped an order may be made dealing with the whole question. The facts in the present case are insufficient to justify the Commission in making a broad ruling herein which would deal adequately with the entire situation. The present order will, therefore, stand subject to revision or modification upon a later hearing upon the general question.

An order will be entered denying the motion.

13 I. C. C. Rep.

No. 940.

POWHATAN COAL & COKE COMPANY

v.

NORFOLK & WESTERN RAILWAY COMPANY; ALGOMA COAL & COKE COMPANY; ARLINGTON COAL & COKE COMPANY; ASHLAND COAL & COKE COMPANY; BROWNING COAL & COKE COMPANY; BOOTH-BOWEN COAL & COKE COMPANY; BUCKEYE COAL & COKE COMPANY; BOTTOM CREEK COAL & COKE COMPANY; COALDALE COAL & COKE COMPANY; CROZER COAL & COKE COMPANY; CRYSTAL COAL & COKE COMPANY; CRANE CREEK COAL & COKE COMPANY; EUREKA COAL & COKE COMPANY; EMPIRE COAL & COKE COMPANY; ELKHORN COAL & COKE COMPANY; ELK RIDGE COAL & COKE COMPANY; GOODWILL COAL & COKE COMPANY; GILLIAM COAL & COKE COMPANY; GREENBRIER COAL & COKE COMPANY; HOUSTON COAL & COKE COMPANY; INDIAN RIDGE COAL & COKE COMPANY; KEYSTONE COAL & COKE COMPANY; LOUISVILLE COAL & COKE COMPANY; LYNCHBURG COAL & COKE COMPANY; MILL CREEK COAL & COKE COMPANY; McDOWELL COAL & COKE COMPANY; MONITOR COAL & COKE COMPANY; MIDDLE STATES COAL & COKE COMPANY; POCAHONTAS COLLIERIES COAL & COKE COMPANY; POCAHONTAS CONSOLIDATED COAL & COKE COMPANY; ANGLE COAL & COKE COMPANY; CHEROKEE COAL & COKE COMPANY; CASWELL CREEK COAL & COKE COMPANY; DELTA COAL & COKE COMPANY; LICK BRANCH COAL & COKE COMPANY; NORFOLK COAL & COKE COMPANY; ROLFE COAL & COKE COMPANY; SHAMOKIN COAL & COKE COMPANY; SAGAMORE COAL & COKE COMPANY; PULASKI COAL & COKE COMPANY; PEERLESS COAL & COKE COMPANY; PINNACLE COAL & COKE COMPANY; PAGE COAL & COKE COMPANY; ROANOKE COAL & COKE COMPANY; SHAWNEE COAL & COKE COMPANY; TIDEWATER COAL & COKE COMPANY; THOMAS COAL & COKE

COMPANY; UPLAND COAL & COKE COMPANY; HIA-WATHA COAL & COKE COMPANY; PAWAMA COAL & COKE COMPANY; PIEDMONT COAL & COKE COMPANY; SMOKELESS COAL & COKE COMPANY; SPRING COAL & COKE COMPANY; WALBRIDGE LEASE NO. 9; WENONAH COAL & COKE COMPANY; WEYANOKE COAL & COKE COMPANY, AND ZENITH COAL & COKE COMPANY.

Submitted November 26, 1907. Decided January 14, 1908.

1. Complaint alleges that the method of car distribution known as the "coke-oven basis," enforced by defendant railway company in the Pocahontas Flat Top coal district in West Virginia, unduly discriminates against complainant, and asks that the so-called "capacity basis" of car distribution be adopted; *Held*, upon all the facts and circumstances in the case, that the coke-oven basis does not fairly measure the relative rights of the various operators in said coal district, but unduly discriminates against complainant and operates to the unreasonable preference of other mining companies in the same field.
2. While the mine capacity of a given shipper may be greater than his allotment of cars, yet where this is also the case as to other shippers similarly situated in the same coal field, it is the duty of the carrier, when the supply of cars is inadequate, to fairly distribute the available number among all operators.

Z. T. Vinson and Geo. S. Graham for complainant.

Joseph I. Doran and John H. Holt for Norfolk & Western Railway Company.

W. L. Penfield and W. S. Penfield for Indian Ridge Coal & Coke Company.

William A. Glasgow, jr., for Booth-Bowen Coal & Coke Company, Crane Creek Coal & Coke Company, Shawnee Coal & Coke Company, Crystal Coal & Coke Company, Keystone Coal & Coke Company, Weyanoke Coal & Coke Company, Thomas Coal & Coke Company, Pocahontas Collieries Company, Pawama Coal & Coke Company, Arlington Coal & Coke Company, Gilliam Coal & Coke Company, Pocahontas Consolidated Coal & Coke Company, Elk Ridge Coal & Coke Company, Tidewater Coal & Coke Company, Bottom Creek Coal & Coke Company, Buckeye Coal & Coke Company, Roanoke Coal & Coke Company, Ashland Coal & Coke Company, Pinnacle Coal & Coke Company, Pulaski Coal & Coke Company, Algoma Coal & Coke Company, Spring Coal & Coke Company, Piedmont Coal & Coke Company, Greenbrier Coal & Coke Company, Louisville Coal & Coke Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The complaint in this proceeding alleges that the method of car distribution, known as the "coke-oven basis," adopted and enforced by the defendant railway company in the Pocahontas Flat Top coal district in West Virginia, unduly and unjustly discriminates against complainant to the undue preference and advantage of other mine operators in said district: First, because the basis is itself essentially inequitable in that it places an arbitrary limit upon the amount of coal complainant may ship; and, second, because the "coke-oven basis" is, in fact, disregarded in the apportionment of the available car supply to certain operations in said district.

In the complaint the manner in which cars loaded with fuel coal for the use of defendant and other carriers are charged in the apportionment of cars to the coal field was also declared to be unjustly discriminatory; but as complainant is contending for the adoption of the so-called "capacity basis" of car distribution, and as the method of counting cars loaded with coal for carriers' use presents a question common to both the "capacity basis" and "coke-oven basis," that feature of the case was, by mutual consent of the parties, eliminated from the issue and need not be considered in this report. The material facts are as follows:

The complainant is a corporation, with a capitalization of \$150,000, organized under the laws of West Virginia, engaged at the time of filing this petition and since 1889 in the business of mining, selling, and shipping coal from the Pocahontas Flat Top coal district to markets outside of the State of West Virginia. The defendant railway company is a common carrier subject to the act to regulate commerce. The other defendants are corporations or individuals operating mines in and shipping coal from the said Pocahontas Flat Top coal district.

The Pocahontas Flat Top coal district, hereinafter called the Pocahontas district, is situated in the counties of McDowell and Mercer, W. Va., and the county of Tazewell, Va., and as now developed embraces a territory about 25 miles long and 5 miles or more wide. During 1906 the total production of coal in this district was over 6,000,000 tons, of which complainant mined and shipped about 121,000 tons. The defendant railway company is the only carrier by rail which enters the Pocahontas district. Mining conditions are substantially the same throughout the entire district, except for certain advantages possessed by the operators of thick beds of coal, as compared to thin beds, which will be mentioned hereafter.

The theory of the "coke-oven basis" of distribution is that the available supply of coal cars shall be distributed to mine operators

in proportion to the number of coke ovens erected by each operator. That is to say, the number of ovens erected by any individual operation divided by the total number of coke ovens in the district will give the percentage of the available car supply to which such operation is at any time entitled. There are important exceptions made in the application of this basis of distribution, which will be noted in due course.

The adoption of this method of car distribution seems to have been the result of a tripartite agreement between the railway company, the land companies, and the lessee operators. While it is difficult to ascertain the exact date when this method of distribution was first put in force, it is clear from the record that it has been in existence since 1889. Its adoption is due both to the quality of the coal produced in this district and to the fact that practically all of the mine operators, being lessees of the land companies, were required by their lessors to build a definite number of coke ovens per 100 acres of coal land.

The Pocahontas coal is a soft coal, and when this field was opened it was believed to be good business policy to require the coal to be screened and the slack manufactured into coke, the expected result being that the operator, instead of having for sale merely the inferior "run-of-mine" coal, would produce both good coal and good coke. By this means the landowners would increase their royalties, the railway company its freights, and the mine operators their products. A further consideration leading to this agreement was the belief held at the time by the railway company and landowners that the Pocahontas field would become a great iron-ore producing district. To facilitate the output of this mineral wealth it was desirable and necessary to produce coke in the same field. Therefore, the landowners required their lessees to construct from 10 to 20 coke ovens per 100 acres of land leased.

An agreement entitled "Coal Producers' Contract," entered into August 11, 1886, by and between the railway company and certain landlord companies then in the Pocahontas field, provided, *inter alia*, as follows:

The parties hereto agree that during the existence of this contract they will make no leases or sales of lands or mining rights for coal operations until special arrangements have been made with the railroad company for such additional equipment as may be needed, and upon the express condition that the purchaser, lessee, or sublessee, shall become a party to this agreement.

The contract was to become effective January 1, 1887, and continue in force until December 31, 1896. The record does not disclose that the railway company, by any formal instrument, bound itself to provide $1\frac{1}{2}$ coal cars for each coke oven constructed, but letters signed by its president appear to show the intention of the railway company,

during the period from 1886 to 1901, to provide cars upon that basis, and also the understanding of the operators that for each coke oven constructed the railway company would be required to add $1\frac{1}{2}$ coal cars to the equipment apportioned to the Pocahontas field.

During this time additional ovens were not allowed to be erected without the consent of the railway company, which exercised its right, under the contract above quoted, to limit and restrain such construction. In the fall of 1902, being importuned to remove this restraint, it did so, upon the express condition that it would thereafter recognize no obligation upon it to build $1\frac{1}{2}$ cars for each oven constructed.

The Pocahontas Coal & Coke Company, a corporation organized under the laws of the State of New Jersey, is the owner of the greater portion of the Pocahontas coal lands that have been leased to the defendant operators; a majority of the stock of the Pocahontas Coal & Coke Company is owned by the Norfolk & Western Railway Company; the Pocahontas Coal & Coke Company neither mines nor ships coal.

There are in the Pocahontas district variations from the strict theory of the coke oven basis in three important particulars. (1) Certain operations east of the Great Flat Top Mountain receive an arbitrary percentage of the total number of available cars in the district before the residue of such cars are prorated among the remaining operations on the coke oven basis; (2) the percentage of available coal cars for another group of operations is based upon the number of ovens actually erected, plus a certain number of allotted or imaginary ovens; (3) another group of operations have erected no ovens, but receive a percentage of available coal cars based wholly on allotted or imaginary ovens. The facts concerning these arbitrary allotments of cars are:

(1) In the beginning of the development of coal operations in the Pocahontas district the railway was constructed only to the east side of the Great Flat Top Mountain. Several coal developments were made there, which shipped their product exclusively to the east, inasmuch as there was no outlet by railroad to the west. Subsequently, at great expense, the railway was extended through the Great Flat Top Mountain by tunnel and down the grades on the western side through the adjacent coal field. In consequence of physical conditions, it cost 5 or 10 cents more per ton to haul coal to tide water from the western than from the eastern group of mines. In order that the eastern mines might not have an undue advantage in freight rates over the western operations, it was sought to attain some form of compromise between the two divisions of the field, by which both would be given the same freight rate, and the eastern some advantage

which would compensate it and not destroy the advantages of its natural location. An agreement or understanding was accordingly reached between the railway company and the operators east and west of the mountain, whereby the two divisions of the field should receive the same rate, but that the 1,551 coal cars then in the service of the field should be retained for the exclusive use of the eastern operations. Subsequently, by agreement or consent of the operators in the entire field, the eastern operations, in lieu of the original 1,551 cars, were allowed .05985 per cent of the total number of available cars in the district. The companies receiving this arbitrary allotment are: Booth-Bowen Coal & Coke Company, Buckeye Coal & Coke Company, Mill Creek Coal & Coke Company, Pocahontas Collieries Coal & Coke Company, Caswell Creek Company.

(2) The Goodwill Coal & Coke Company has 90 ovens erected, and receives a percentage of cars based upon 50 allotted ovens in addition thereto, or 140 ovens in all. The Louisville Coal & Coke Company, with 135 ovens erected, receives a percentage of cars based upon 25 allotted ovens, or 160 in all. This allotment of imaginary ovens as a basis of car distribution was agreed to or acquiesced in by the other operations in the field.

(3) The following companies have erected no ovens, but receive a percentage of the available car supply based upon the number of allotted or imaginary ovens set opposite their names:

	Ovens.
Hlawatha Coal & Coke Co.....	93
Pawama Coal & Coke Co.....	32
Piedmont Coal & Coke Co.....	87
Smokeless Coal & Coke Co.....	21
Spring Coal & Coke Co.....	115
Walbridge Lease No. 9 Coal & Coke Co.....	89
Wenonah Coal & Coke Co.....	116
Weyanoke Coal & Coke Co.....	82
Zenith Coal & Coke Co.....	122

This arrangement, which has been acquiesced in by the other operations in the field, appears to have been adopted as a temporary basis for the distribution of cars to said companies, which are comparatively new, to enable them to ship coal while they are opening and developing their mines and constructing the coke ovens required under their leases. The arrangement has been prolonged by the unsettled state of the question of car distribution in the Pocahontas field, which had been one of conference and negotiation for at least eighteen months prior to the date of filing this complaint. The operations other than those named in the foregoing exceptions receive their share of available cars for commercial shipments of coal strictly in accordance with the number of coke ovens erected.

It is said to cost approximately \$500 to erect a coke oven. Upon this basis the complainant, with 225 ovens, has invested about

\$112,500 in coke ovens, a portion of which must be regarded as a premium paid for the use of coal cars, in view of the fact that either because there is not a market for all the coke which can be produced in the district, or on account of the inability of the railroad company to furnish sufficient cars, or perhaps for other commercial reasons, a large proportion of the ovens already erected are not in use. Data upon this point furnished by complainant at the hearing are as follows:

Year.	Ovens erected.	Ovens burning.	Percentage of ovens burning.
1897	5,232	2,650	50.6
1898	5,232	3,689	70.1
1899	5,868	3,885	72.8
1900	5,507	4,298	77.9
1901	6,000	4,262	70.8
1902	6,866	4,067	59.2
1903	7,894	5,889	66.8
1904	9,188	4,107	44.9
1905	9,626	5,986	62.3
1906	10,176	5,845	52.5

Assuming, as appears to be the unquestioned fact, that there are more ovens now erected than can be operated profitably or otherwise, and that the car supply is not increased, it follows that complainant, or any other operator, in order to increase the output of his mine, must construct at a cost of \$500 each a sufficient number of ovens to increase his percentage of the total number of ovens; and even with an increasing car supply he must follow the same course if he desires relatively to increase the output of his mine as compared with that of other mines in the same field.

In its answer herein the defendant railway denies that in its application of the coke-oven basis it has unjustly discriminated against complainant or any other shipper in the Pocahontas field, but "repeats that it has no choice or profit in the premises and simply stands ready to obey the Commission's decree upon the subject of car distribution, whatever that judgment may be." At the hearing the railway company, by its president, expressly denied any legal obligation to continue the coke-oven basis in force, and showed that in the past it had indicated its willingness to substitute therefor a capacity basis of car distribution, if such change appeared to be desired by the greater proportion of operations in the field.

Upon request of the railway company's president a majority of the operators in the coal field met the officials of the railway company in Roanoke, Va., on October 18, 1906, at which time the president stated to the operators that "on request of 75 per cent of the representation in the Pocahontas field I would be willing to put the Pocahontas field, as well as other fields, on a capacity basis,"

and explained that by capacity basis he meant "the capacity of mines for loading and shipping and selling coal." At this meeting, voting by the number of ovens erected, over 71 per cent of the field favored the capacity basis. The president then requested the operators to confirm their vote by letter. The result of the returns was 7,227 ovens in favor of a capacity basis, 2,638 against such basis, while 2,090 did not reply. Thus only 60.4 per cent of the field confirmed its desire for the capacity basis, and the president, in accordance with the implied terms of his proposition, made no change in the method of car distribution.

The railway company further contends that whether or not it was or is under any legal obligation to provide $1\frac{1}{2}$ cars for each coke oven erected, it has actually furnished a sufficient number of cars to meet that requirement. At the date of the "Coal Producers' Contract" the average coal car capacity was 21 tons, while it is now 43 tons. On August 31, 1907, with 10,472 ovens erected, the field was entitled on the basis of $1\frac{1}{2}$ cars per oven, to 15,708 cars and there were 15,256 cars actually assigned to it, or a shortage of only 452 cars on the actual car basis; but upon a tonnage basis these 15,256 cars would be equivalent to 31,586 cars of 21 tons capacity, showing an excess of 15,875 cars over the required number when figured upon a tonnage basis. The railway says that on or before December 31, 1907, a number of cars now in course of construction will be received and put in the service of the Pocahontas district, which will increase the actual number of cars assigned to that field to 16,002, or an excess of 294 cars over and above $1\frac{1}{2}$ times the number of coke ovens erected.

By reason of a temporary addition to its motive power, during July and August, 1907, the railway company was able to furnish all the coal cars which the operations in the Pocahontas field could load, thus placing the field, for those two months, upon practically a capacity basis. The following table shows the percentage of the available car supply to which each operation was entitled under the coke oven basis and the percentage of the total output of the field furnished by each operation during the two months in question:

Statement showing coal car percentage allotted by the Norfolk & Western Railway Company (as per its percentage sheet No. 51, effective April 1, 1907) and the actual percentage shipped by each company of the total tonnage in July-August, 1907.

Operations.	Ovens erected Apr. 1, 1907.	Oven rating in effect since Apr. 1, 1907.	Percentage of coal cars (engine fuel included) shipped in July, 1907.	Percentage of coal cars (engine fuel included) shipped in Aug., 1907.
Poconantas Coll. Co.	800	0.09728	0.07238	0.08177
Poconantas Consol. Co.:				
Angle colliery	192	.01620	.03972	.04158
Cherokee colliery	128	.01080	.02345	.02183
Caswell Creek colliery	281	.02674	.02323	.02712
Delta colliery	120	.01012	.04286	.03466
Lick Branch colliery	158	.01333	.02279	.02503
Norfolk colliery	322	.02717		
Rafle colliery	100	.00844		
Sagamore colliery	280	.02363		
Shamokin colliery	389	.03283	.02766	.02943
Browning mines	78	.00616	.02550	.00892
Booth-Bowen C. & C. Co.	177	.02347	.01395	.01467
Buckeye C. & C. Co.	172	.01989	.01664	.01940
Goodwill C. & C. Co.	140	.01181		
Louisville C. & C. Co.	160	.01350	.01820	.01947
Crystal C. & C. Co.	140	.01181	.01371	.01169
Thomas Coal Company	146	.01232	.00843	.00807
Pittsford C. & C. Co.	200	.01688	.01730	.01849
Crane Creek C. & C. Co.	200	.01688	.01737	.01163
Goodale C. & C. Co.	140	.01182		
Hill Creek C. & C. Co.	215	.02706	.04123	.04040
Eklhorn C. & C. Co.	170	.01434	.02008	.01728
Crozer C. & C. Co.	354	.02987	.03613	.03470
Houston C. & C. Co.	280	.02341	.02357	.02497
I plant Co.	232	.01955	.01166	.03407
Powhatan C. & C. Co.	225	.01899	.02750	.02670
Lynchburg C. & C. Co.	213	.01797	.01722	.02058
Alabama C. & C. Co.	225	.01898	.01730	.01968
Elk Ridge C. & C. Co.	200	.01688	.01304	.01356
Gulham C. & C. Co.	217	.01811	.02340	.02350
Indian Ridge C. & C. Co.	200	.01688	.01324	.01433
Roanoke C. & C. Co.	130	.01097	.01348	.01565
Arlington C. & C. Co.	158	.01333	.01297	.01590
McDowell C. & C. Co.	200	.01688	.03283	.03157
Greenbrier C. & C. Co.	200	.01688	.02440	.02225
Ashtland C. & C.	300	.02532	.01378	.01377
Monitor colliery	110	.00928	.01405	.01961
Zenith Coal & Coke Co.	126	.01063	.01692	.01124
Keystone Coal & Coke Co.	211	.01780	.02177	.02190
Pulaski Iron Company	260	.02194	.02397	.02480
Eureka Coal & Coke Co.	200	.01688	.01891	.01592
Shawnee Coal & Coke Co.	188	.01586	.01568	.01530
Empire Coal & Coke Co.	250	.02110	.02646	.02879
Peerless Coal & Coke Co.	254	.02143	.02074	.01697
Bottom Creek Coal & Coke Co.	220	.01856	.01708	.01787
Tidewater Coal & Coke Co.	300	.02532	.01319	.01685
Widemouth allotment	635	.03359	.06391	.06272
Middle States C. & C. Co.	150	.01266	.01224	.00953
Page C. & C. Co.	500	.04222	.01942	.01899
Total	11,141	1.00000	1.00000	1.00000
Total coal cars shipped			13,645	14,381

This table does not furnish an accurate basis of comparison between the percentage of shipments by each operation under the coke-oven basis and under the conditions existing in July and August, 1907, for the reason that cars loaded with coal for the use of the Norfolk & Western Railway are not counted against the distributive percentage of the various mines under the coke-oven basis and are counted in the percentage of total output for July and August in the foregoing table. The record does not indicate what proportion of the coal so loaded was for the use of the railway company.

Taking this table as it stands, it appears that 22 operations increased their relative output as measured by the coke-oven basis, 17 decreased their relative output, and 8 showed an increase in one month and a decrease in the other under the conditions prevailing in July and August, 1907. Although complainant, under the coke-oven basis, is entitled to but 0.01899 per cent of the available car supply, it produced and shipped during July 0.02250 per cent and during August 0.02670 per cent of the aggregate output of the district. During 1906 it shipped, on an average, about 10,000 tons a month; in July, 1907, it shipped 15,350 tons, and in August 19,200 tons. A portion of its increase in actual tonnage may be due to the fact that during July and August the railway company was able to furnish all the cars required, whereas previously it had seldom, if ever, done so, rather than to the temporary substitution of a capacity basis of distribution.

The Page Coal & Coke Company, with 500 ovens erected, is entitled to 0.04222 per cent of the available car supply, as compared with complainant's percentage of 0.01899, based upon 225 ovens; yet in July and August, respectively, the Page Company furnished only 0.01942 and 0.01899 per cent of the aggregate shipments of the field, while complainant furnished 0.02250 and 0.02670 per cent thereof. The Algoma Coal & Coke Company, with the same number of ovens and percentage of available car supply as complainant, furnished in July and August, respectively, 0.01730 and 0.01968 per cent of the total output of the field, as compared with complainant's said percentages of 0.02250 and 0.02670. Other similar comparisons are apparent from consideration of the table.

It further appears that under the present basis of distribution certain companies have not in the past loaded all of the cars to which they were entitled, and such excess of cars was divided among other operations by private arrangement among the mine owners. An exhibit introduced by complainant shows that during 1906 the Pocahontas collieries, Norfolk, Rolfe, Sagamore, Shamokin, Booth-Bowen, Buckeye, Goodwill, Crystal, Crane Creek, Algoma, Elk Ridge, Ashland, Shawnee, Peerless, Bottom Creek, Tidewater, and Page companies did not load the number of cars to which they were entitled under the coke-oven basis. A further significant fact is that, of the companies named above, the Pocahontas collieries, Shamokin, Booth-Bowen, Buckeye, Goodwill, Ashland, Shawnee, Peerless, Bottom Creek, Tidewater, and Page companies are among those which, under the conditions existing in July and August, 1907, shipped a smaller proportion of the aggregate output of the field than the percentage of the available car supply to which they are entitled under the coke-oven basis.

As stated above, there are certain advantages in the working of mines enjoyed by the operators of thick beds of coal, which vary from 6 to 11 feet in thickness. The so-called thin veins are those less than 6 feet thick. The labor in mining coal in the Pocahontas district consists mainly in cutting under a vein of coal. After this work is performed the coal is loosened by the discharge of powder placed at the top of the bed. While it requires as much labor to cut under a thin as a thick vein, in the latter case the miner obtains as a result of his labor more coal than results from an equivalent expenditure of energy in the former. As a result of this condition in respect of labor, differences in the size of mine cars used and other circumstances peculiar to thin-vein mines the production of a given amount of coal is more expensive to the thin than to the thick vein operator.

The Indian Ridge Coal & Coke Company, one of the defendants in this proceeding, operating a thin-vein mine, presented evidence at the hearing, and by argument and brief earnestly urged continuance of the coke-oven basis. This company avers that on April 1, 1893, it leased 956 acres of land in the Pocahontas district; that it has built thereon 200 coke ovens, and in good faith invested several hundred thousand dollars in the development of its property upon the assumption that the railway company would furnish one and one-half cars for each coke oven erected and distribute its coal cars upon the coke-oven basis; and that if cars are distributed on the capacity basis the output of the thick-vein mines, by reason of the advantages already mentioned, will be greatly increased and the output of the thin-vein mines proportionately decreased. This company admits that the coke-oven basis limits the relative output of each mine and avers that the existence of the thin-vein miner depends upon preserving the present method of car distribution.

The effect of a capacity basis of car distribution upon the Indian Ridge and other thin-vein operations could not, of course, be determined in advance of an actual test of the operation of that system. While the apprehensions entertained by the Indian Ridge Company are perhaps the logical result of actual and practical experience, they are in the very nature of things at present incapable of positive demonstration.

The Indian Ridge Company further contends that the acts of the parties in the Pocahontas field, constituting the basis upon the faith of which large amounts of money have there been invested in mines and coke ovens, amount at least to an implied contract between the railway company and the operators, imposing upon the former the affirmative duty of maintaining and continuing the method of car distribution which was one of the major inducements to the opening and development of thin-vein mines. It has been stated heretofore

that the railway company expressly disclaims any legal or other obligation to continue the coke-oven basis.

The testimony of Mr. L. V. Johnson, president of the defendant railway company, is interesting in this connection. At the hearing Mr. Johnson said:

I favor abandoning the present basis of car distribution—the coke-oven basis—and believe that the time has arrived when we should go to a well-defined and systematic capacity basis.

Again, after describing the conditions which led to adoption of the coke-oven basis, Mr. Johnson continued:

Changed conditions have also been brought about in the Pocahontas district. The abnormal demand for coal that sprang up four or five years ago has made the business attractive to investors, and new operations have been opened up in the Pocahontas field, some of which are on the lands of the original land-owners, others upon individual property, and negotiations are constantly before railway officials for opportunities to open up operations on property that belongs individually either to those parties who are desirous of opening the operations or to lease from the individual owners; so that, as a common carrier, we are bound to furnish equipment to the best of our ability to these operators who have gone into business and have not built coke ovens, and do not intend to build coke ovens, and there is no way in which the railway can bring any influence to bear upon these people to construct ovens for the purpose of a car distribution.

In the consideration of this question I have recognized that there might be some possible injury temporarily done to some few of the operations that are in what is called and termed the thin-vein district; but there are but few operations in that district that have constructed coke ovens. A large majority of those, especially in the Widemouth district, have not constructed coke ovens, and I think it might be advisable to state that one of the reasons they have not built coke ovens is because they commenced the opening of operations about the time this question of doing away with the coke-oven basis of car distribution was becoming an active matter of discussion.

I do not believe that the change from the coke-oven basis to a capacity basis would ultimately work an injury to this particular section of the field. They have the opportunity of spending the money which they would put into coke ovens by putting it into their underground workings, and thereby enable them to produce a great deal more coal, and upon which they have in the past and are now, so far as we know, producing coal at a profit to themselves. While the profit may not be the same as the unit per ton of those in the thicker vein fields, yet it is a profitable business and may fairly be presumed to be a profitable business proposition.

But, above all other considerations, I believe it should be changed to the capacity basis and that basis be determined by the assistance of the operators, so that a uniform method of car distribution may be applied to all the coal fields and all the operators and all the producers alike.

In the other coal fields served by the defendant railway the distribution of coal cars to individual operations is made upon a capacity basis.

This witness gave the following explanation of his failure to substitute a capacity basis of car distribution for the coke-oven basis:

There has been an agreement or there has been an understanding on the part of the railway company with its operators that the coke-oven basis was the basis of car distribution, and I have not felt at any time, neither do I feel now, that the railway company would be justified in changing a method that was established twenty-three years ago, which has been enforced all of this time, and for many years has served its purpose well, without the approval and consent of a very large majority of those who had received their car distribution on that basis.

It is the duty of railroad companies to provide suitable vehicles of transportation and to offer their use impartially to all shippers. That unjust discrimination in the matter of car distribution is prohibited by the act to regulate commerce has been repeatedly held by the Commission: *Richmond Elevator Co. v. P. M. R. Co.*, 10 I. C. C. Rep., 629; *Eaton v. C. H. & D. R. Co.*, 11 I. C. C. Rep., 619; *Railroad Commission of Ohio v. H. V. R. Co.*, 12 I. C. C. Rep., 398. While the mine capacity of a given shipper of coal may be greater than his allotment of cars, yet where this is also the case as to other shippers similarly situated in the same coal field, it is the duty of the carrier, when the supply of cars is inadequate, to fairly distribute the available number among all operators, including the shipper in question, *United States ex rel. Coffman v. N. & W. Ry. Co.*, 109 Fed. Rep., 831. It only remains, therefore, to determine whether the facts disclosed in this proceeding sustain the charge of unjust discrimination against complainant in the distribution of coal cars by the defendant company in the Pocahontas field.

The "coke-oven basis" is characterized in argument and briefs as "archaic," "anomalous," "absurd," "arbitrary," etc. Each of these adjectives may fairly describe the system and yet not indicate that it violates any provision of the regulating statute. "The mere showing of such a rule and claim that it works discrimination is insufficient. The actual effect of the rule during the time covered by the complaint is necessary to a determination of the question of unfairness in the distribution of cars," *Richmond Elevator Co. v. P. M. R. Co.*, *supra*.

The argument for the coke-oven basis is well summarized by the court in *United States ex rel. Coffman v. N. & W. Ry. Co.*, 109 Fed. Rep., 831, in the following language:

It is convenient for the railway, because it is uniform in principle and conduces to the education of its employees upon fixed and mathematical lines; and it is highly advantageous to the coal operators—First, because of the publicity of its operation. Under it secret discrimination by the railway company in favor of one operator against another is impossible. Each operation knows the number of coal cars owned by the railway company and the number of completed coke ovens in the field. Each operation knows the number of its own ovens and the number of its neighbors' and, in consequence, knows its particular percentage in the allotment of cars. There can be, therefore, under such a system no secret discrimination whatever. Secondly, each operation

having knowledge of the number of cars, the number of ovens, and its own percentage of distribution, knows exactly what car supply it can rely upon, and is enabled, in consequence, to employ its hands, dig, ship, and sell its coal accordingly. In other words, each operation attains regularity in its business. What may be designated as an unreliable or mercurial business—that is to say, a business first up and then down in volume—is avoided, and all the beneficial results of trustworthy regularity are realized.

These observations appear in the decision of the court upon the application of Coffman, sales agent of the Indian Ridge Coal & Coke Company, for a writ of mandamus under the act to compel the Norfolk and Western Railway Company to furnish cars for shipments of coal to certain vessels at Lamberts Point, Va. The court held that inasmuch as unjust discrimination in the distribution of coal cars had not been proved the writ of mandamus would not issue.

In marked contrast with the paragraph quoted from the Coffman case are the following remarks of the court in *United States ex rel. Kingwood Coal Co. v. West Virginia Northern R. Co. et al.*, 125 Fed. Rep., 252:

I am of the opinion that in reaching a proper basis for the distribution of railroad cars, it is necessary that an impartial and intelligent study of the capacity of the different mines be made by competent and disinterested experts, whose duty it should be to carefully examine into the different elements that are essentially factors in the finding of the daily output of the respective mines which are to share in the allotment. Among the matters to be investigated are the following: The working places, the number of mine cars and their capacity, the switch and tippie efficiency, the number and character of the mining machines in use, the hauling system and the power used, the number of miners and other employees, the mine openings, and the miners' houses. * * *

The capacity of a coal mine for rating purposes is the amount of coal it is able to place in the railroad cars in a given time, and that depends on its working places, the thickness of its coal seams, its switches, workmen, mine cars and tipples, its general equipment, and its management. The output of a mine is the amount of coal it in fact places in the railroad cars for shipment, and that is regulated by the number of such cars it is able to secure, provided its general equipment is efficient, and it may be, and generally is, less than its capacity, but can never exceed it. It is on account of these matters and those similar in character—of frequent occurrence in the mining regions—that no ironclad rule can be established with safety for the disposition of the questions we are now considering, and so it is that no separate element of a mine's capacity can be said to certainly control its output, which can in fact only be determined by the careful observation of impartial experts who have worthily and discriminatively studied and applied the conditions applicable thereto.

In affirming the decision of the circuit court in the Kingwood case, the circuit court of appeals, in an opinion by Mr. Chief Justice Fuller, 134 Fed. Rep., 198, said, *inter alia*:

Granting that discrimination has resulted in diminishing the relative output of the Kingwood mine for lack of its just proportion of cars, that discrimination was unlawful, and the correct distribution and rating can not be allowed to be affected by conduct contrary to law.

It appears upon inspection that the record in this case does not disclose the relative capacity of the mines of complainant and other operators in the Pocahontas field by comparison of the number of working places, number and size of mine cars, mining machines, and other elements which tend to show the working capacity of a mine. Owing to the fact that the distribution of cars in this field has been for many years upon the coke-oven basis, it may be that no capacity rating of these mines has ever been made, and therefore none could be shown at the hearing. In the absence of such comparative data it is not altogether easy to decide the issue of discrimination, because it might well be claimed that if the coke-oven basis, with the exceptions noted, does as a matter of fact measure with approximate correctness the relative car rights of the different operators in the Pocahontas field, then, whatever may be its probable effect upon the future development of that field and of complainant's mine, no present discrimination can be said to exist.

It is remarked above that the coke-oven basis, with certain exceptions, is now in force in the Pocahontas coal field, but this is hardly an accurate statement. The actual fact appears to be that there are to-day in that field two separate and distinct methods of division. To a majority of the mines cars are distributed in proportion to the number of coke ovens erected. The eastern operations, regardless of the number of ovens heretofore built, receive .05985 per cent of the aggregate car supply, while the operations mentioned under exception (3) receive of the available cars a share equivalent to that which would accrue to them upon the erection of 757 ovens. It is difficult to explain this arbitrary allowance except upon the theory of an honest effort to approximate the relative capacity of the several mines in question. It follows, therefore, that in the distribution of cars throughout the field the coke-oven basis is applied to certain mines, while to other mines is applied what may be termed a modified capacity basis. Nor can it be doubted that, in case of refusal of any present or prospective operator to erect coke ovens, it would be the duty of the railway company to furnish such operator with a fair share of its available car supply.

While the coke-oven basis may have the various advantages of publicity and uniformity mentioned by the court in the Coffman case, it has also the inherent disadvantage, among others, of lacking flexibility and adaptation to varying needs. It seems self-evident that the application of a uniform and rigid rule to widely dissimilar conditions is likely to result in unjust discrimination. The failure of the coke-oven basis to meet the exigencies of the situation is shown in the counting of assumed or imaginary ovens in addition to the ovens actually erected, and in the distribution of cars to the Hiawatha and

other companies purely upon the basis of hypothetical ovens. Moreover, the continuance of that basis under present conditions must involve an economic waste which ought to be avoided. The record shows that about 52 per cent of the existing coke ovens are sufficient to supply the current demand for coke from the field in question. This means that in order to increase its relative output of coal complainant must erect additional ovens at an expense of \$500 each, with no other reason for the outlay or benefit therefrom than the resulting addition to the number of cars which would be secured for shipments of coal, and without regard to any increase or decrease in the productive capacity of its mines.

It requires only ordinary imagination to see the illogical and artificial character of the coke-oven basis. One company, with limited capital, uses its money in building coke ovens instead of extending its underground workings, while another company expends the same sum in enlarging its mining facilities, but without adding to the number of superfluous ovens. The necessary result would be that the former, with its mining capacity unchanged, would secure an increased car supply, while the latter, with largely augmented ability to produce coal, would have fewer cars for its shipment. A system which involves such absurd consequences is certainly open to grave objection.

The situation in the Pocahontas field at present is not greatly at variance with the case supposed. During the year 1906, under the coke-oven basis, the Pocahontas, Norfolk, Rolfe, Sagamore, Shamokin, Booth-Bowen, Buckeye, Goodwill, Crystal, Crane Creek, Algoma, Elk Ridge, Ashland, Shawnee, Peerless, Bottom Creek, Tidewater, and Page companies were entitled to and received many more cars than they had occasion to use; while, according to the record, complainant was never able to secure a sufficient number to approximate its loading capacity. In other words, in the same field and among operators similarly situated, one concern was seriously crippled by car shortage while other concerns had more cars than they could load.

It has already been observed that the distribution sheet for July and August, 1907, does not furnish an accurate basis of comparison, for the reason that shipments of fuel coal for carrier's use are included therein, while the cars for such shipments are not charged against the allotment under the coke-oven basis. Nevertheless, this record is strongly suggestive. The Page Company, with 500 ovens erected and entitled under the coke-oven basis to more than twice as many cars as complainant, shipped during July and August, respectively, only 0.01942 and 0.01899 per cent of the aggregate output of the field, as against complainant's shipments of 0.02250 and 0.02670

per cent of such aggregate. Thus, while both mines were supplied with cars to the extent of their working capacity, a company entitled to twice as many cars as complainant actually loaded much less tonnage during the period in question. When to this is added the fact that eleven of these companies, which in July and August failed to ship a proportion of the total output of the field equivalent to their share of available equipment under the coke-oven basis, also failed during the year 1906 to use all the cars to which they were entitled under that basis, the conviction is quite irresistible that the coke-oven basis does not fairly measure the relative rights of the various operators in the Pocahontas district.

Upon consideration of all the facts and circumstances disclosed in this case, and with our view of the obligations of the defendant carrier, we are led to the conclusion that the present basis of car distribution to mines in the Pocahontas field unduly and unjustly discriminates against complainant and operates to the undue and unreasonable preference and advantage of other mining companies in the same field.

It appears that the defendant railway company some years ago became and still is the virtual owner of the coal lands upon which the operations in question are located, the legal title thereto being in the land company whose stock is owned by the railway company. The coke-oven basis of car distribution seems to have been the outcome of the general policy of the railway company, in accordance with which the land company required each lessee of coal lands to construct a certain number of coke ovens per hundred acres of land leased as above stated. This policy was evidently adopted for the purpose of encouraging coke production and the manufacture in that district of articles which could be made by the use of coke. The railway company now prefers to discontinue the coke-oven basis and apparently desires an order of the Commission as a justification for taking that course.

While we are convinced by the facts and circumstances disclosed that the present basis is unjust and results in unlawful discriminations, we are not unmindful that the change which will be directed may occasion loss and injury to some of the operators whose expenditures for the construction of coke ovens, as required by their leases, may be materially and perhaps greatly diminished in value. Although not warranted in sanctioning a further continuance of the coke-oven basis, which under existing conditions is found to be neither just nor suitable, we do not desire or intend that the report and order herein shall affect the rights, responsibilities, or liabilities of any of the interested parties under any contract or agreement which they might otherwise be able to enforce for their benefit.

In its petition complainant asked for reparation, but no evidence was offered as to the amount or extent of the damages suffered, and it is to be inferred that this demand has been virtually abandoned.

Upon argument, the authority of the Commission to prescribe the method of car distribution to be substituted for the coke-oven basis was challenged. We deem it unnecessary to express an opinion upon that point for two reasons: In the first place, the record is not sufficiently complete to warrant an attempt to prescribe, except possibly in the most general way, the system or method which should hereafter be followed in the distribution of cars to the various mines in the Pocahontas district. Secondly, the discontinuance of the coke-oven basis, which will be required by an appropriate order, will involve the adoption of a system which does not result in unlawful discrimination, and we think the defendant railway company should take the responsibility, at least in the first instance, of determining and applying the substituted basis.

In dealing with this question of car distribution the Commission, in its report of certain investigations under the joint resolution of Congress of March 7, 1906, commonly referred to as the coal and oil investigation, made the following, among other, recommendations:

That every common carrier engaged in interstate transportation of coal be required to make public the system of car distribution in effect upon its railway and the several divisions thereof, showing how the equipment for coal service is divided between the several divisions of its road and how the same in times when the supply of equipment does not equal the demand is divided among the several mining operations along such road; and that the carrier further be required to publish at stated periods and at each divisional headquarters upon its line of road the system of car distribution in effect and the actual distribution made to each mining operation under such system.

That where the capacity of the mines is the basis for the distribution of equipment, a fair, just, and equitable rating of the mines be required, and that provision be made for the representation of owners of the mines at the rating thereof.

These recommendations are here quoted not as definite directions to be followed by the defendant railway company, but rather as indicating the principles which, in our judgment, should be observed in order to provide a fair and equitable distribution of cars when the available equipment is insufficient to meet all demands. It is assumed that some form of capacity basis suited to the conditions and peculiarities of the district in question will be devised and put into effect. An order will be entered in accordance with the views thus expressed.

No. 792.

PITTSBURG PLATE GLASS COMPANY

v.

PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; PHILADELPHIA & READING RAILWAY COMPANY; NORFOLK & WESTERN RAILWAY COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; BOSTON & MAINE RAILROAD; LEHIGH VALLEY RAILROAD COMPANY; MICHIGAN CENTRAL RAILROAD COMPANY; PENNSYLVANIA COMPANY, AND ERIE RAILROAD COMPANY.

No. 815.

SAME

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted May 9, 1907. Decided January 13, 1908.

1. Unjust discrimination in rates against domestic shipments of plate glass in favor of import shipments was alleged, on the ground that rates on the former are relatively higher than the inland rail proportion of the total charge from the point of origin in a foreign country.
2. Under the law, as interpreted by the Supreme Court of the United States in *Texas & Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S., 197, the Commission can not consider such disparity in rates alone as constituting unjust discrimination.

13 I. C. C. Rep.

3. In considering the question of alleged unjust discrimination in favor of shippers of import plate glass moving from the ports of entry in this and adjacent foreign countries to interior American destinations, and against domestic shipments between points in the United States, it is the duty of the Commission to look to the circumstances and conditions affecting the matters involved, not only in this country, but in the entire field of commerce, here and abroad. It is well settled by the highest judicial authority that the existence and effectiveness of competition between carriers, whether by rail or water, whether subject to the Federal act of regulation or not, and competition of markets, or the absence of such competition, are, among other things, pertinent to the question of similarity of circumstances and conditions, and as to whether the discrimination complained of and shown is or is not undue or unreasonable.
4. To make the total through charge from a foreign point of origin the absolute measure of the rate to be charged on domestic traffic from the port of entry in this country through which the import shipment moves would be to establish a hard and fast rule difficult if not impossible for the rail carriers in this country to conform to in the establishment and publication of their rates, in view of that uncertain and flexible element involved in the ascertainment of the total through charges, to wit, the rates to the port.
5. Discriminations of the nature referred to in sections 3 and 4 of the act, in so far as they result from the bona fide action of a carrier in meeting circumstances and conditions not of its own creation, and which are reasonably necessary for that purpose, do not of necessity fall under the condemnation of the law.
6. Transportation from a seaport of the United States or an adjacent foreign country to an interior American destination, in completion of a through movement of freight from a point in a foreign but not adjacent country, whether upon a joint through rate or upon a separately established or proportional inland rate applicable only to imports moving through, is not a "like service" to the transportation of traffic starting at such domestic port, though bound for the same destination.
7. As held in numerous decisions of the Supreme Court, it is neither required by law nor just that the rates of a carrier on traffic subject to intense competition shall mark the limit or measure of its rates on traffic not subject to such competition. Being bound to consider the more intense competition to which the transportation of the foreign product is subject as one of the "circumstances and conditions" affecting the relative adjustment of rates, the Commission can not, solely upon the basis afforded by a comparison of the inland proportion of the through rate from the foreign point of origin with the rate applying on domestic shipments of plate glass in this country, condemn the latter as unreasonable or unjustly discriminatory. As rates applying on domestic shipments of plate glass between points in this country were challenged mainly on the ground of unjust discrimination and not on account of their unreasonableness *per se*, and as there is no basis in the record of the case as presented for a determination as to whether these rates are or are not just and reasonable of themselves, the complaint is dismissed without prejudice.

W. S. Dalzell for complainant.

George S. Patterson for Pennsylvania Railroad Company; Pennsylvania Company, and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

S. F. Andrews for Norfolk & Western Railway Company.

John J. Wilson for Baltimore & Ohio Railroad Company and Baltimore & Ohio Southwestern Railroad Company.

C. C. Paulding for New York Central & Hudson River Railroad Company; Lake Shore & Michigan Southern Railway Company, and Michigan Central Railroad Company.

S. F. Andrews and *Perkins Baxter* for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The issue here involved is alleged unjust discrimination in rates against domestic plate glass and in favor of that imported from foreign countries in that while the Official Classification third-class rate applies on domestic shipments, shipments from foreign producing points via ocean steamship lines to ports of entry and thence by rail to ultimate interior points of destination in this country are accorded rates never in excess of fourth class and in many instances much below fifth class.

The original complaint filed by complainant (No. 792) was set for hearing in Washington, D. C., May 15, 1905. On that day a petition was filed by the same complainant against the Illinois Central Railroad Company, alleging that this carrier in making a rate of 32 cents per 100 pounds on plate glass in carloads from Antwerp, Belgium, to Chicago, Ill., and 38 cents per 100 pounds from the same place to Minneapolis, Minn., and at the same time exacting a rate of 40 cents per 100 pounds from Chicago to Minneapolis, 60 cents per 100 pounds from Pittsburg to Minneapolis, 51 cents per 100 pounds from Kokomo to Minneapolis, and 42 cents per 100 pounds from East St. Louis to Minneapolis, subjected complainant and other American manufacturers of plate glass to unreasonable and unjust rates and undue and unreasonable prejudice and disadvantage.

The Illinois Central Railroad Company admitted quoting the above-mentioned rates for shipments of plate glass in carloads, tendered during the year 1905, but averred that neither complainant nor any other shipper or importer had tendered any shipments of plate glass between said points since these rates were quoted; that the reason it quoted said rates was to enable this defendant to handle some of this import traffic, and in order to handle it to meet competitors' rates on this traffic through Atlantic ports, from Montreal to Newport News; that it was necessary for the Gulf ports to name lower rates than those through Atlantic ports because of the longer voyage, slower steamers, and less frequency and regularity of service; that this rate had not resulted in any business to defendant and it is reasonable to conclude that defendant overestimated its quotation, or underestimated its disadvantages, but defendant denied that these rates on import and domestic glass, respectively,

were unreasonable or unjust or subjected complainant to undue or unreasonable prejudice or disadvantage in violation of the act to regulate commerce.

On March 9, 1906, hearing was had at Pittsburg, Pa., and it was requested that the divisions accorded the railroads out of the through rates be filed in the record. The defendants objected to this requirement, but subsequently most, if not all, of the divisions involved were filed.

Considerable delay has been experienced in reaching a decision in this case by reason of the supplementary proceedings against the Illinois Central Railroad (that company not having been made a party defendant in complainant's first petition), the difficulties in obtaining statements of the divisions, and the effort to subserve the convenience of parties at the hearings.

By consent of parties it was agreed that the two cases should be consolidated and heard together and that all the evidence filed in the first case (No. 792) be considered and made a part of the second case (No. 815) so far as same was applicable. The cases were finally argued and submitted May 9, 1907, and will be disposed of in one opinion.

The complainant is largely engaged in the manufacture and sale of plate glass, having its principal works at Pittsburg, Pa., and certain auxiliary plants and warehouses at convenient distributing points in the United States, and also a plant in Brussels, Belgium.

It appears that the plate-glass industry is one of comparatively recent origin in the United States, and that complainant, having taken over about ten of the companies that were operating independently, incorporated in the year 1895 under the name of the Pittsburg Plate Glass Company, having a capital stock of \$10,000,000, which was increased in 1902 to \$12,492,000, based on actual values. This company manufactures and sells about 60 per cent of the plate glass made in the United States.

This industry is protected by a duty on import glass, all sizes up to 2 feet 8 inches, of 8 cents per square foot; from 2 feet 8 inches up to 5 square feet, 10 cents per square foot; from 5 to 10 square feet, 22½ cents per square foot, and on all sizes exceeding 10 square feet, 35 cents per square foot. Complainant says this duty is inadequate for the protection of the industry, as appears from the following table, showing the increased importation of glass in recent years:

	Square feet.		Square feet
1898.....	641,000	1903.....	6,690,325
1899.....	928,273	1904.....	4,917,067
1900.....	941,879	1905.....	7,000,000
1901.....	3,237,357	1906 (estimated).....	10,000,000
1902.....	4,185,762		

The increase in import glass is practically coincident with the low rate of freight made by the railroads on such imports.

In the year 1903 complainant acquired a plant in Belgium where it manufactures about 3,000,000 feet per annum. Twenty to thirty per cent of the product of the Belgium factory is brought here, being between 2 and 3 per cent of the total output of complainant. Plate glass can be manufactured in Belgium and sent here subject to the duty cheaper than it can be manufactured in this country. The Belgium investment is making more money than the American, notwithstanding American glass has the preference where prices are equal; but the difference in freight rates diminishes or destroys the protective value of the duty.

The average dividends paid since the consolidation of the Pittsburgh Plate Glass Company are 3.76 per cent per annum, and a surplus has been accumulated of \$4,453,236.35 (May, 1905). There is \$150,000 in preferred stock. The balance is common stock, there being no bonds.

The price of plate glass is decidedly lower than it was five years ago, and is 30 per cent lower than in 1896. This reduction in price is caused by the presence of foreign glass and the low rate of transportation accorded it by the railroads.

The railroads are benefited by the presence of foreign glass, and the price of glass is less to the consumer by reason thereof. There is little or no profit in the smaller sizes made by complainant, but the profit on larger sizes is ample. The larger part of the imported glass is of the smaller sizes.

The competition with foreign glass began about 1898 and was the result of the attempt of the Chesapeake & Ohio Railway to make Newport News a great port. This company started a line to Antwerp and afterwards the other roads joined in the very low rates the Chesapeake & Ohio was making. The Illinois Central started to compete in the spring of 1905.

The railroad companies admit, and the testimony shows, that at the time of the hearing of these cases they were transporting plate glass under the terms of Official Classification No. 26 at third-class rates, and foreign or import glass at a less rate; e. g., plate glass could take a through rate from Antwerp to Chicago, via Boston and the New York, New Haven & Hartford Railroad, at 40 cents per 100 pounds, and between the same points, via New Orleans and the Illinois Central Railroad, at 32 cents per 100 pounds, when the rate for the same commodity originating in Boston shipped to Chicago was 50 cents, or originating in New Orleans, 75 cents; that is to say, import glass could be transported from Antwerp, via Boston, to Chicago, a distance of 4,000 miles, for 40 cents, and via New Orleans, 5,200 miles, for 32

cents, while the rate on domestic shipments was 50 cents for the haul of 999 miles from Boston to Chicago, and 75 cents from New Orleans to Chicago, a distance of 922 miles. Deducting, say, 10 cents for the ocean rate, this would leave the railroads 30 cents from Boston to Chicago on import shipments, as against 50 cents between the same points on domestic shipments, and 22 cents from New Orleans to Chicago on import shipments, as against 75 cents between the same points on domestic shipments. The contrast may be further illustrated by the following tabulation of rates in effect at the time of the hearing:

Freight rates on import glass.

Antwerp to—	
Chicago—	
Via Boston.....	\$0.40
Via New Orleans.....	.32
Minneapolis—	
Via Boston.....	.46
Via New Orleans.....	.38
St. Louis—	
Via Boston.....	.42
Via New Orleans.....	.40
Louisville—	
Via Boston.....	.42½
Via New Orleans.....	.32
Newport News to Chicago.....	.29

Freight rates on domestic glass.

Boston to—	
Chicago.....	\$0.50
Louisville.....	.50
New Orleans to—	
Chicago.....	.75
St. Louis.....	.65
Kokomo.....	.75
Pittsburg to—	
Boston.....	.33
Chicago.....	.30
St. Louis.....	.37
Minneapolis.....	.60
Chicago to Minneapolis.....	.40
Newport News to Chicago.....	.43

Or between the same points:

	Import.	Domestic.
Boston to Chicago.....	\$0.30	\$0.50
New Orleans to Chicago.....	.22	.75
Newport News to Chicago.....	.29	.43

Since the hearing in these cases, effective January 1, 1908, the special carload rates on import traffic from shipside, New Orleans, to Central Traffic Association territory, including Chicago and Joliet, Ill., Milwaukee, Wis., Hammond, Bloomington, and Indianapolis, Ind., and Louisville, Ky., have been withdrawn. This traffic now takes the import class rates from shipside, New Orleans, as follows:

To Chicago and Joliet, Ill., Milwaukee, Wis., Hammond and Bloomington, Ind., and Louisville, Ky.: Third class (applicable on plate glass, n. o. s., exceeding 80 inches in combined outside measurement, but not exceeding 7½ feet in width, or with a united outside measurement not exceeding 19 feet, carloads), 38 cents per 100 pounds. Fourth class (applicable on plate glass, n. o. s., not exceeding 80 inches in united outside measurement, carloads), 27 cents per 100 pounds.

To Cincinnati, Ohio: Third class (as above), 32 cents per 100 pounds. Fourth class (as above), 22 cents per 100 pounds.

To Indianapolis, Ind.: Third class (as above), 35 cents per 100 pounds. Fourth class (as above), 25 cents per 100 pounds.

Effective January 1, 1908, the special import rates applying from New York and other Eastern seaport cities to Central Traffic Association territory were also withdrawn, and the third and fourth class rates as per Official Classification were substituted, as follows: From New York to Chicago: Third class (applicable on plate glass, n. o. s., exceeding 80 inches in combined outside measurement, but not exceeding 7½ feet in width, or with a united outside measurement not exceeding 19 feet, carloads), 50 cents per 100 pounds. Fourth class (applicable on plate glass, n. o. s., not exceeding 80 inches in united outside measurement, carloads), 35 cents per 100 pounds.

To other points in Central Traffic Association territory the rates are certain percentages of the rates to Chicago, the latter being the 100 per cent or basic rates.

It will therefore be seen that the disparity between the inland rates on import glass and the rates applicable to domestic shipments, as in effect at the time of the hearing, has been substantially diminished, no changes having been made in the domestic carload rates and the import rates having been materially increased.

The larger part of the import plate glass is under 5 feet square, while the rates given on domestic are for larger sizes, and when sizes of the domestic and import glass are compared some of the discrepancy in rates will disappear. Some deductions are made in inland rates for glass less than 80 united inches.

While there is disparity between the import and domestic rates, it is not shown that the traffic undergoes the same movement, i. e., takes the same routes in the same direction. The domestic rate is for carriage from inland distributing points to other inland points and to the seaboard, while the import rate is exclusively from the seaboard to inland points, and no closer comparison of the rates can be made than a comparison of reverse routes. The classification shows third class for domestic and fourth class for import, but the evidence discloses no precisely similar movement.

Where glass can be transported by water or rail it seems railroad transportation is preferred, mainly on account of the better facilities for handling and stowing away, and because claims for breakage against the railroads are inconsiderable. The domestic glass is loaded and unloaded by the consignor and consignee, while the railroads are at the expense of loading the import glass at the seaboard.

The defendants maintain that the disparity in rates results from the necessities of the trade and the demands of commerce, for which they are not responsible and from which they can not escape; that efforts have been made by the carriers to correct the situation, but the case is doubly hard to deal with by reason of the fact that any concerted action on the part of the carriers fixing rates might bring them within the provisions of the Sherman antitrust act of July 2, 1890, and, second, because of the competition of the carriers among themselves, and the opposing interests of the seaports. Each railroad seeks to encourage the bringing of ships to its piers that there may be facilities for handling the exports of this country. These ocean carriers demand the carriage of a share of the imports, and will land at those piers where they can unload and load the greatest quantity. The railroads are thus forced to permit these carriers to make deliveries of imports, and are further forced to make cheap carriage of these imports to inland destinations in order to sustain the movement of traffic from abroad and incidentally to maintain their own export and import transportation.

The difficulties of the carriers in reaching an agreement upon the subject of rates are increased by reason of the situation of the ports, e. g., the lower rate is given via New Orleans because the ocean mileage is much greater, involving more risk and longer delays, and less regularity of service than via Atlantic ports, and, consequently, the importers must be induced to accept this route by the offer of a lower rate. It was claimed also that many of the cars hauling the products of the Mississippi Valley to the Gulf ports for export would return empty unless they could be freighted with import goods, and these shipments they were glad to procure at a small price for the carriage, as any receipts from this source under the circumstances represent practically a net profit to the railroads.

During the period covered by the proceedings had in these cases import tariffs were in an unsettled condition. A different through rate might be named each day in good faith for the carriage of like shipments between the same points, without the railroads being liable to the charge of unjust discrimination, these fluctuations being due mainly to the exigencies of the ocean carriers, the division to the railroad not being always affected by such changes.

Competition exists from the Gulf ports along the Atlantic seaboard to Montreal and other Canadian ports, and upon application for a rate from Antwerp to any interior point in the United States each railroad might give a different quotation in the effort to bid lower than its competitors, as the ocean rates are more or less flexible to meet the conditions imposed by the shipper.

In the case of *New York Board of Trade & Transportation et al. v. Pennsylvania Railroad Company et al.*, 4 I. C. C. Rep., 447, involving rates on import traffic, decided January 29, 1891, the Commission held as follows:

The statute has provided for the regulation of interstate traffic, by interstate carriers, partly by rail and partly by water or all-rail, shipped from one point in the United States to another destination within the United States, or from a point of shipment in the United States to a port of entry within the United States or an adjacent foreign country, or from a port of entry either within the United States or in an adjacent foreign country, on import traffic brought to such port of entry, from a foreign port of shipment and destined to a place within the United States. * * * The statute has undertaken no such regulation from foreign ports of shipment to ports of entry either within the United States or to ports of entry in an adjacent foreign country, and as between these ports has provided for no publication of tariffs of rates and charges, but has left it to the unrestrained competition of ocean carriers and all the circumstances and conditions surrounding it. These circumstances and conditions are indeed widely different in many respects from the circumstances and conditions surrounding the carriage of domestic interstate traffic between the States of the American Union by rail carriers; but as the regulation provided for by the act to regulate commerce does not undertake to regulate or govern them, they can not be held to constitute reasons in themselves why imported freight brought to a port of entry of the United States or a port of entry of an adjacent foreign country destined to a place within the United States should be carried at a lower rate than domestic traffic from such ports of entry respectively to the places of destination in the United States over the same line and in the same direction. To hold otherwise would be for the Commission to create exceptions to the operation of the statute not found in the statute; and no other power but Congress can create such exceptions in the exercise of legislative authority. * * * But when it (import freight) reaches a port of entry within the United States, or a port of entry of a foreign country adjacent to the United States, in either event upon a through bill of lading, destined to a place in the United States, then its carriage from such port of entry to its place of destination in the United States under the operation of the act to regulate commerce must be under the inland tariff from such port of entry to such place of destination covering other like kind of traffic in the elements of bulk, weight, value, and of carriage. * * * Foreign and home merchandise, therefore, under the operation of this statute, when handled and transported by interstate carriers, engaged in carriage in the United States, stand exactly upon the same basis of equality as to tolls, rates, charges and treatment for similar services rendered.

On March 23, 1889, the Commission issued a general order, which provided, among other things, as follows:

Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff covering other freights.

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On January 29, 1891, the Commission made a similar order, effective May 5, 1891, against such of the defendant carriers as were found to be disregarding the ruling in the case of *New York Board of Trade & Transportation v. Pennsylvania Railroad Company et al.*, for the enforcement of which it was necessary to institute proceedings in the Circuit Court of the United States for the Southern District of New York, and which finally went to the Supreme Court of the United States on appeal, whereupon a decree was entered March 30, 1896, adverse to the above ruling of the Commission.

This ruling of the court, in *Texas & Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S., 197, is so directly pertinent to the matters now in controversy before us that we deem it proper here to quote from the elaborate opinion therein, as follows:

We come now to the main question of the case, and that is whether the Commission erred, when making the order of January 29, 1891, in not taking into consideration the ocean competition as constituting a dissimilar condition and in holding that no circumstances and conditions which exist beyond the seaboard in the United States could be legitimately regarded by them for the purpose of justifying the difference in rates between import and domestic traffic.

After briefly reviewing the causes which led up to the passage of the act and the purposes of the same, the court adds:

The scope or purpose of the act is, as declared in its title, to regulate commerce. It would, therefore, in advance of an examination of the text of the act, be reasonable to anticipate that the legislation would cover, or have regard to, the entire field of foreign and interstate commerce, and that its scheme of regulation would not be restricted to a partial treatment of the subject. So, too, it could not be readily supposed that Congress intended, when regulating such commerce, to interfere with and interrupt, much less destroy, sources of trade and commerce already existing, nor to overlook the property rights of those who had invested money in the railroads of the country, nor to disregard the interests of the consumers, to furnish whom with merchandise is one of the principal objects of all systems of transportation.

* * * * *

Having thus included in its scope the entire commerce of the United States, foreign and interstate, and subjected to its regulations all carriers engaged in the transportation of passengers or property, by whatever instrumentalities of shipment or carriage, the section proceeds to declare that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

The significance of this language, in thus extending the judgment of the tribunal established to enforce the provisions of the act to the entire service to be performed by carriers, is obvious.

Proceeding to the second section, we learn that its terms forbid any common carrier, subject to the provisions of the act, from charging, demanding, collecting or receiving "from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, sub-

ject to the provisions of the act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," and declares that disregard of such prohibition shall be deemed "unjust discrimination," and unlawful.

Here, again, it is observable that this section contemplates that there shall be a tribunal capable of determining whether, in given cases, the services rendered are "like and contemporaneous," whether the respective traffic is of a "like kind," and whether the transportation is under "substantially similar circumstances and conditions."

* * * * *

The Commission justified its action wholly upon the construction put by it on the act to regulate commerce, as forbidding the Commission to consider the "circumstances and conditions" attendant upon the foreign traffic as such "circumstances and conditions" as they are directed in the act to consider. The Commission thought it was constrained by the act to regard foreign and domestic traffic as like kinds of traffic under substantially similar circumstances and conditions, and that the action of the defendant company in procuring through traffic that would, except for the through rates, not reach the port of New Orleans, and in taking its *pro rata* share of such rates, was an act of "unjust discrimination," within the meaning of the act.

In so construing the act we think the Commission erred.

As we have already said, it could not be supposed that Congress, in regulating commerce, would intend to forbid or destroy an existing branch of commerce, of value to the common carriers and to the consumers within the United States. Clearly, express language must be used in the act to justify such a supposition.

So far from finding such language, we read the act in question to direct the Commission, when asked to find a common carrier guilty of a disregard of the act, to take into consideration all the facts of the given case—among which are to be considered the welfare and advantage of the common carrier, and of the great body of the citizens of the United States who constitute the consumers and recipients of the merchandise carried; and that the attention of the Commission is not to be confined to the advantage of shippers and merchants who deal at or near the ports of the United States, in articles of domestic production. Undoubtedly the latter are likewise entitled to be considered; but we can not concede that the Commission is shut up by the terms of this act to solely regard the complaints of one class of the community. We think that Congress has here pointed out that, in considering questions of this sort, the Commission is not only to consider the wishes and interests of the shippers and merchants of large cities, but to consider also the desire and advantage of the carriers in securing special forms of traffic, and the interest of the public that the carriers should secure that traffic, rather than abandon it, or not attempt to secure it. It is self-evident that many cases may and do arise where, although the object of the carriers is to secure the traffic for their own purposes and upon their own lines, yet, nevertheless, the very fact that they seek, by the charges they make, to secure it, operates in the interests of the public.

Moreover, it must not be overlooked that this legislation is experimental. Even in construing the terms of a statute, courts must take notice of the history of legislation, and, out of different possible constructions, select and apply the one that best comports with the genius of our institutions and, therefore, most likely to have been the construction intended by the lawmaking power. Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress. The very terms of the statute—that charges must be *reason-*

able, that discrimination must not be *unjust*, and that preference or advantage to any particular person, firm, corporation or locality must not be *undue* or *unreasonable*, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act.

The principal purpose of the second section is to prevent unjust discrimination between shippers. It implies that, in deciding whether differences in charges, in given cases, were or were not unjust, there must be a consideration of the several questions whether the services rendered were "like and contemporaneous," whether the kinds of traffic were "like," whether the transportation was effected under "substantially similar circumstances and conditions." To answer such questions, in any case coming before the Commission, requires an investigation into the facts; and we think that Congress must have intended that whatever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges, ought to be considered in forming a judgment whether such differences were or were not "unjust." Some charges might be unjust to shippers—others might be unjust to the carriers. The rights and interests of both must, under the terms of the act, be regarded by the Commission.

The third section forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation or locality; and as there is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable, such questions are questions not of law but of fact. The mere circumstance that there is, in a given case, a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act. Hence it follows that before the Commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable. * * *

The effort of the Commission, by a rigid general order, to deprive the inland consumers of the advantage of through rates, and to thus give an advantage to the traders and manufacturers of the large seaboard cities, seems to create the very mischief which it was one of the objects of the act to remedy.

* * * * *

The conclusions that we draw from the history and language of the act, and from the decisions of our own and the English courts, are mainly these: That the purpose of the act is to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or discriminations: That, in passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment: That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United

States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered: That if the Commission, instead of confining its action to redressing, on complaint made by some particular person, firm, corporation or locality, some specific disregard by common carriers of provisions of the act, proposes to promulgate general orders, which thereby become rules of action to the carrying companies, the spirit and letter of the act require that such orders should have in view the purpose of promoting and facilitating commerce, and the welfare of all to be affected, as well the carriers as the traders and consumers of the country.

While there is considerable dispute as to the full and exact scope of this decision of the Supreme Court, and therefore some doubt as to its effect in the final adjudication of some of the questions referred to in the opinion therein, no room is left for doubt concerning one of the fundamental questions involved in the cases now before us. It is clear that in considering the question of alleged unjust discrimination in favor of shippers of import glass moving from the ports of entry in this and adjacent foreign countries to interior American destinations, and against domestic shipments of glass between points in the United States, it is the duty of the Commission to look to the circumstances and conditions affecting the matters involved, not only in this country, but in the entire field of commerce here and abroad. In other words, "whatever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges" ought to be considered in forming a judgment, whether such differences were or were not unjust, and the circumstance of competition by ocean carriers at the different ports is a fact meriting consideration by the Commission in passing upon the reasonableness of an inland rate applicable from the seaboard on domestic traffic when the reasonableness of such rate is called in question by comparison with a lower rate applying from the port of entry on traffic shipped from a foreign country.

Not all discriminations are unlawful, but only such as are undue or unreasonable; if based on reason and good cause, discriminations can not be condemned as unreasonable. It is well settled by the highest judicial authority that the existence and effectiveness of competition between carriers, whether by rail or water, whether subject to the Federal act of regulation or not, and competition of markets, or the absence of such competition, are, among other things, pertinent to the question of similarity of circumstances and conditions involved in the ultimate question of fact under sections 3 and 4, and as to whether the discrimination complained of and shown is or is not undue or unreasonable. Since, in view of these rulings, it is the duty of the Commission in passing upon these questions to look to

these and other facts, wherever found, pertaining to the traffic involved, upon the theory that the carriers may lawfully within reason meet the circumstances and conditions which confront them, it follows that we must recognize the due and logical effect of the situation thus presented. The necessary conclusion is that discriminations of the nature referred to in sections 3 and 4 of the act, in so far as they result from the bona fide action of a carrier in meeting circumstances and conditions not of its own creation, and which are reasonably necessary for that purpose, do not of necessity fall under the condemnation of the law.

There is a long line of decisions of the court to the effect that it is neither required by law nor just that the rates of a carrier on traffic subject to intense competition shall mark the limit or measure of its rates on traffic not subject to such competition.

Transportation from a seaport of the United States or an adjacent foreign country to an interior American destination in completion of a through movement of freight from a port of a foreign but not adjacent country, whether upon a joint through rate or upon a separately established, or proportional, inland rate applicable only to imports moving through, is not a "like service" to that of the transportation independent and complete within itself of traffic starting at such domestic port, though bound for the same destination.

It is true the court held in the case of *Wight v. United States*, 167 U. S., 512, that the existence of competition did not create "dissimilar circumstances and conditions" such as to justify discrimination as defined in the second section. But this referred to unjust discrimination as between different shippers over the same line in the performance of a "like service," and as we have seen, the transportation of import traffic from the port of entry to an interior destination in completion of a through movement from a point in a foreign country is not a like service to that involved in the transportation of domestic traffic originating at such port, even where the transportation in all other respects is performed under like conditions.

It follows that the charge of unjust discrimination in violation of section 2 of the act is not sustained.

Neither does it appear from the facts that any of the defendants have made rates for import glass which result in a loss to them or which are not remunerative in some measure, or that such rates have in any case been made lower than compelled by the force of competition.

While the complaints contain the general charge that the rates on domestic shipments of glass are unreasonable and unjust, and therefore violative of section 1 of the act, the evidence upon this point was not convincing, the complainant relying chiefly upon a

comparison with the rates on imports, and these in many instances apply on shipments moving in the opposite direction, because the domestic shipments are almost uniformly from interior manufacturing points, whereas the import shipments are from the ports to interior destinations. The cases have been presented mainly with reference to the allegation of unjust discrimination.

Respecting the comparison of domestic and import rates on plate glass via the Illinois Central from New Orleans to Chicago and other interior points where the disparity is very marked, it was urged by that company that its domestic rates from New Orleans were only "paper" rates, there being no shipments moving from New Orleans other than imports, and that if domestic shipments should be offered from New Orleans, or if business could be built up by the making of lower rates, that road would be ready to consider favorably the establishment of the same on domestic shipments. In addition to the competitive necessity for the establishment of these lower import rates, it was also urged that these rates were made remunerative partly by reason of the fact that there was a large preponderance of empty car movement *from* the port over that *to* the port of New Orleans.

There is an available all-water route by way of Montreal to Chicago and other interior lake points. Although it does not appear that any considerable amount of this traffic is moved that way and it does appear that rail transportation is preferred to that by water for the reasons before stated, it is probable that any considerable increase of the total charges applying through American ports would have the effect of deflecting this traffic from such ports. To make the total through charge from the foreign point of origin the absolute measure of the rate to be charged on domestic traffic from the port of entry in this country through which the import shipment moves would be to establish a hard and fast rule difficult if not impossible for the rail carriers to conform to in view of that uncertain and flexible element involved in the ascertainment of the total through charges, to wit, the rates to the ports.

While the Commission finds no basis in the record before it for condemning any of the domestic rates involved as being unreasonably high, it does not desire to be understood as holding that they are reasonable and just. As before stated, the matter has been presented in the main as one of unjust discrimination, and we can only deal with it here as involving that question.

What the complainant asks is that either the domestic rate be lessened, or that the inland proportion of the import rate be increased, or that both be put in the same class, or that any other equitable

adjustment that will not give the foreign glass cheaper transportation than the domestic shall be made.

Respecting the suggestion in the prior case that the application of lower rates on import than on domestic shipments tended to render nugatory the protection to American manufacturers and producers intended by the tariff duties, the court in *Texas and Pacific Railway Company v. Interstate Commerce Commission*, *supra*, said:

Our reading of the act does not disclose any purpose or intention, on the part of Congress, to thereby reinforce the provisions of the tariff laws. These laws differ wholly in their objects from the law to regulate commerce. Their main purpose is to collect revenues with which to meet the expenditures of the Government, and those of their provisions, whereby Congress seeks to so adjust rates as to protect American manufacturers and producers from competition by foreign low-priced labor, operate equally in all parts of the country.

Bound as we are to consider the more intense competition to which the transportation of imports is subject as one of the "circumstances and conditions" affecting the relative adjustment of rates, the Commission can not, solely upon the basis afforded by a comparison of the inland proportion of the through rates from the foreign point of origin with the rates applying on domestic plate glass in this country, condemn the latter as unreasonable or unjustly discriminatory. The complaints will therefore be dismissed without prejudice.

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No. 988.

D. J. EDDLEMAN, FOR HIMSELF AND OTHER RESIDENTS OF THE TOWN OF ELDER, IND. T., AND VICINITY,

v.

MIDLAND VALLEY RAILROAD COMPANY.

Submitted December 14, 1907. Decided January 13, 1908.

1. Petition of complainants asking for an order requiring defendant to reestablish its station at Elder, Okla. (formerly Indian Territory), denied, because the interest of the general public does not require it and such reestablishment would be an unnecessary burden upon defendant.
2. If complainants had a contract with defendant to locate and maintain its station at Elder, they may perhaps maintain a suit at law for breach of that contract; but this Commission has no power to award damages for failure to perform such a contract.

Baker & Pursel for complainants.

J. W. McLoud and *Ira D. Oglesby* for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainants ask the Commission to order the defendant to reestablish its station at Elder, the same having been removed in December, 1906.

The Midland Valley Railroad extends from Hoya, in the State of Arkansas, to Arkansas City, Kans. The construction of that portion of it between Fort Smith and Arkansas City was begun in the fall of 1903 and completed in the spring of 1906. Haskell and Bixby, formerly in Indian Territory, now in Oklahoma, are two stations upon the line of this road, 16 miles apart, Haskell being the more easterly of the two. This portion of the road was constructed during the summer of 1905 and at that time the company established a passing switch and station at Elder, which is 9 miles from Haskell and 7 miles from Bixby. The company later became convinced that two

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stations would be required between Haskell and Bixby and in this view located a station at Stone Bluff and another at Leonard, the distance being from Haskell to Stone Bluff, 5 miles; from Stone Bluff to Leonard, 6 miles; from Leonard to Bixby, 5 miles. At the time of the establishment of the new station at Leonard that at Elder was discontinued.

Looking to the interest of the general public, the location of the present stations at Stone Bluff and Leonard is much more desirable than would be a single station at Elder. The traffic of this road and the necessities of the country through which it passes do not require more than two stations between Haskell and Bixby, and it would be impractical to so locate those stations that one of them should be at Elder. We are of the opinion, therefore, that the present location is right and that the location of an additional station at Elder would be an unnecessary burden upon the defendant.

The complainant, Eddleman, insists that he has invested a considerable sum of money upon the representation of the defendant that it would locate and maintain its station at Elder, and that by the removal of this station this investment is rendered largely valueless.

The population of Elder has never exceeded 25. The fact that it was the station of the defendant for that vicinity made it a more desirable point than it would otherwise have been for the transaction of business and the complainant has located there a general store. He has also made some other investments, all of which are less valuable owing to the removal of the defendant's station to Leonard. The station was located at Elder in July, 1905, and was removed in December, 1906.

If this complainant had what amounts to a contract with the defendant to locate and maintain its station at Elder he may perhaps maintain a suit at law for breach of that contract. This Commission has no power to award damages for failure to perform such a contract. Assuming that we have any jurisdiction in the premises, it would be to inquire whether any provision of the act to regulate commerce was violated by the conduct of the defendant against which the complaint is directed. Since the proper operation of this railroad requires the location of its stations in the vicinity where they now are, and does not require the maintenance of a station at Elder, we do not think it could, in any event, be our duty to require the defendant to reestablish this station.

Several jurisdictional questions have been urged upon our attention by the attorneys for the defendant, but in view of our conclusion upon the question of fact presented it is unnecessary to consider these questions of law.

The complaint should be dismissed.

No. 1266.

TRAFFIC BUREAU, MERCHANTS' EXCHANGE OF
ST. LOUIS,

v.

MISSOURI PACIFIC RAILWAY COMPANY AND ST.
LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY.

Submitted January 27, 1908. Decided February 4, 1908.

Petition for rehearing in this case denied, but for reasons stated in the opinion the differential between Kansas City and St. Louis to the territory mentioned is made 1 cent less than the former order contemplated; that is to say, 12 cents on coarse grains and their products and 14 cents on wheat and its products.

J. C. Lincoln for complainant.
Alexander G. Cochran for defendants.

REPORT ON MOTION FOR REHEARING.

PROUTY, *Commissioner*:

In the above case the Commission by its order of December 16, 1907, directed the reduction of certain grain rates from St. Louis to Little Rock. Upon the hearing of the original petition, which was directed against these same defendants, the freight traffic manager of the Missouri Pacific system testified as a witness and stated, in substance, in reply to an inquiry from the Commission, that he knew of no good reason why the rates in effect should not be reduced. The defendants were represented upon that hearing by the vice-president and general counsel of the system, who said, in substance, that if the Commission made the order the defendants would willingly comply with it.

In order that the Commission might have knowledge of the effect of this order upon other communities we set the case down for hearing at Kansas City. Upon that hearing the representative of the
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grain interests at that market admitted that he could give no substantial reason why the same rates to Little Rock should be maintained from Kansas City and from St. Louis, although he did object to the general adjustment of grain rates into that territory. We also communicated with grain interests at Omaha and Little Rock, receiving from the former word that Omaha was not concerned in the settlement of this question; Little Rock objected, and its objection was considered and referred to in the former opinion.

Upon the above showing the Commission felt safe in making the order which it did. Now these defendants file a petition for rehearing, stating that to put in effect these rates will demoralize all grain rates in the south and southwest and will entail an enormous loss of revenue upon the railroads operating in those sections.

The time has gone by when the mere statement of a traffic opinion which can not be supported by some assignable reason can be of much weight with this body. The reasons given by the petitioners and other interested parties upon the hearing of this motion were three.

First. It is alleged that these lower rates from St. Louis will let into Little Rock territory oats and corn from Iowa and Illinois points and that this will necessitate a reduction in rates from western points of production.

At the present time the Rock Island system, which appeared and made this objection upon the hearing, maintains a tariff from Iowa stations to Little Rock under which grain may move at a rate 1 cent lower than could be produced by the combination on St. Louis under the rates proposed by the Commission. That same system maintains a rate in connection with the Chicago & Eastern Illinois, an affiliated line, from points in Illinois and Indiana which is 5 cents below any possible combination upon the proposed tariff. The Missouri Pacific system itself, until recently, participated in through rates from Iowa points which were less than the combination under the proposed rates.

In view of these facts it is difficult to consider seriously the first reason assigned by these petitioners.

Second. It is said that these lower rates which are proposed will enable St. Louis merchants to handle grain into territory which is now covered by Little Rock. The testimony upon the original case showed that St. Louis had formerly sold in this territory, but was excluded from it at the present time by its rates. We considered in the original case this objection upon the part of Little Rock, reaching the conclusion that St. Louis should not be discriminated against simply for the purpose of allowing Little Rock to occupy this territory. That locality is entitled to transact what business it can upon

a fair adjustment of rates. If its rates are too high at present, they should be reduced.

Third. The third reason is the Kansas City Southern Railway. That company states that if the rate from St. Louis to Little Rock is reduced it will reduce its own rates to Texarkana and corresponding points. It can not be questioned that a reduction by that company of its rates to Texarkana would necessitate a widespread reduction of grain rates into the south and the southwest, but we are utterly unable to see why the application of the rates ordered requires a reduction at Texarkana.

Texarkana and Little Rock are not so related that the rate to one is dependent upon that to the other. The representative of the Kansas City Southern who appeared upon the hearing of this petition was asked whether, if the rates ordered by the Commission were established, it would be possible to make in connection with those rates a combined rate to any station upon his line or to any station in the territory for which his line carries grain which would be lower than the rate now in effect, and this question he answered in the negative. Being further asked why, then, the putting in of these rates would necessitate a reduction at Texarkana, he replied, for the reason that it would be possible to so manipulate billing that grain from St. Louis might be sent on to Texarkana at the balance of the through rate from Kansas City to Texarkana through Little Rock.

The Missouri Pacific system runs from both St. Louis and Kansas City through Little Rock to Texarkana. It permits the stoppage in transit of grain at Little Rock and its subsequent reconsignment at the balance of the through rate. At present the rate to Texarkana is 2 cents higher than to Little Rock from both St. Louis and Kansas City; if the proposed rates are established, the rate from St. Louis to Texarkana will be 6 cents higher than that to Little Rock. If, therefore, a shipment were made from Kansas City to Little Rock, it would be possible to substitute a car of the same kind of grain which had come from St. Louis, and thus to send it to Texarkana for 2 cents per 100 pounds instead of 6 cents.

While this is possible, it would result, ordinarily, in no practical benefit to the grain shipper. These two carloads of grain are both at Little Rock, either one can be sent to Texarkana for 2 cents per 100 pounds, and ordinarily it would be a matter of indifference to the owner whether the carload shipped from St. Louis or the carload shipped from Kansas City went forward. It was, however, explained that inasmuch as the St. Louis market for oats is sometimes lower than the Kansas City market, such manipulation of billing might occasionally be used with profit.

This forwarding of grain upon the through rate when it results in discrimination or improper substitution is of doubtful legality, but assuming it to be legal and to be beneficial as a general practice, there can be no difficulty in so limiting it in the present instance as to remove the objection of the Kansas City Southern. If these traffic gentlemen will bring to that matter a tithe of the fertility of invention which they have exhibited in finding reasons why the order of the Commission can not be enforced, that objection can be overcome.

If the Kansas City Southern Railway, without any justifiable reason, sees fit to reduce its rates and thereby to bring on a general reduction in this territory, that is the misfortune of the competitors of that company. We have no desire at this time to precipitate any general reduction in those grain rates, but we can not be deterred from action which seems right by the unreasonable threat of some railway company that it will injure itself and its competitors if that action is taken.

To avoid, however, giving any possible color to such action upon the part of the Kansas City Southern we have decided to make the differential between Kansas City and St. Louis into this territory 1 cent less than our former order contemplated; that is to say, to make these proportional rates 12 cents on coarse grains and their products and 14 cents on wheat and its products. We shall accordingly deny the petition for rehearing, but shall strike off our former order and issue a new order putting in effect the rates above given.

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No. 1163.

FOREST CITY FREIGHT BUREAU

v.

ANN ARBOR RAILROAD COMPANY; ASHLAND & WESTERN RAILWAY COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; BESSEMER & LAKE ERIE RAILROAD COMPANY; BOSTON & ALBANY RAILROAD COMPANY; BOSTON & MAINE RAILROAD; BUFFALO & SUSQUEHANNA RAILWAY COMPANY; CLEVELAND & BUFFALO TRANSIT COMPANY; CANADIAN LAKE LINE; CENTRAL RAILROAD COMPANY OF NEW JERSEY; CENTRAL INDIANA RAILWAY COMPANY; CENTRAL VERMONT RAILWAY COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO, INDIANA & EASTERN RAILWAY COMPANY; CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS; CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, AND JUDSON HARMON, RECEIVER THEREOF; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; DETROIT & CLEVELAND NAVIGATION COMPANY; DETROIT & BUFFALO STEAMBOAT COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; DETROIT, TOLEDO & IRONTON RAILWAY COMPANY; ERIE & WESTERN TRANSPORTATION COMPANY; ELGIN, JOLIET & EASTERN RAILWAY COMPANY; ERIE RAILROAD COMPANY; EVANSVILLE & INDIANAPOLIS RAILROAD COMPANY; EVANSVILLE & TERRE HAUTE RAILROAD COMPANY; GRAND RAPIDS & INDIANA RAILWAY COMPANY; GRAND TRUNK RAILWAY COMPANY; HOCKING VALLEY RAILWAY COMPANY; LAKE ERIE & WESTERN RAILROAD COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; LEHIGH VALLEY RAILROAD COMPANY; MUTUAL TRANSIT COMPANY; MAINE CENTRAL RAILROAD COMPANY; MARIETTA, COLUMBUS & CLEVELAND RAILROAD COMPANY; MICHIGAN CENTRAL RAILROAD COMPANY; MERCHANTS MONTREAL LINE; NEW YORK CENTRAL & HUDSON RIVER RAILROAD

COMPANY; NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; NORFOLK & WESTERN RAILWAY COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; PERE MARQUETTE RAILROAD COMPANY, AND JUDSON HARMON, RECEIVER THEREOF; PHILADELPHIA & READING RAILWAY COMPANY; PITTSBURG & LAKE ERIE RAILROAD COMPANY; RUTLAND RAILROAD COMPANY; RUTLAND TRANSIT COMPANY; SOUTHERN RAILWAY COMPANY; SOUTHERN INDIANA RAILWAY COMPANY; TOLEDO & OHIO CENTRAL RAILWAY COMPANY; TOLEDO PEORIA & WESTERN RAILWAY COMPANY; TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY; VANDALIA RAILROAD COMPANY; WABASH RAILROAD COMPANY; WEST SHORE RAILROAD COMPANY, AND WHEELING & LAKE ERIE RAILROAD COMPANY.

Submitted January 10, 1908. Decided February 4, 1908.

1. Forest City Freight Bureau, a concern which admits members upon written contract to perform certain services in return for an annual fee, is an association competent to bring a complaint before the Commission under the act to regulate commerce. The fact that it may not be able to answer in costs in case such should be awarded against it on an appeal from the Commission to the courts does not take away its right to bring complaint under the act.
2. The inclusion of wire brushes and brooms, not toilet, in cases in less than carloads, in the first class is unreasonable. Defendants ordered to classify such brushes and brooms in the third class.

H. H. Henry for complainant.

John H. Clarke for New York, Chicago & St. Louis Railroad Company, and Delaware, Lackawanna & Western Railroad Company.

Squire, Sanders & Dempsey and *C. T. Brooks* for Central Indiana Railway Company; Chicago, Indiana & Eastern Railway Company; Grand Rapids & Indiana Railway Company; Erie & Western Transportation Company; Pennsylvania Railroad Company; Toledo, Peoria & Western Railway Company; Vandalia Railroad Company, and Pennsylvania Company.

H. Murray Andrews for Erie Railroad Company.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Boston & Albany Railroad Company; Michigan Central Railroad Company; Chicago, Indiana & Eastern Railway Company; Lake Erie & Western

Railroad Company; Pittsburg & Lake Erie Railroad Company; West Shore Railroad Company; Rutland Railroad Company, and Rutland Transit Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complaint here is directed against carriers in what is known as "Official Classification territory."

The matter in dispute is the reasonableness of the classification, in what is known as Official Classification territory, of wire brushes and wire brooms. Official Classification No. 30, effective August 1, 1907, contains the following:

Brushes (not otherwise specified) in bundles or boxes, less than carload, first class; carloads, third class.

It is conceded that the wire brushes and wire brooms produced by complainant at the hearing and referred to in its complaint are covered by the above provision of the Official Classification and are thereby subjected to first-class rates when shipped in less than carload lots. Complaint asks that such less than carload shipments be given fourth-class rates.

The complaint here is brought by the Forest City Freight Bureau. It appears from the testimony that the method of organization of the Forest City Freight Bureau is as follows: An office is maintained by J. R. Charles, the manager of the bureau. Members become such by entering into written contracts with the bureau by which they pay a stipulated annual fee and the bureau undertakes to perform certain services in the adjustment of disputes with railways and in the prosecution of necessary proceedings. The point is made by defendants that the bureau is not a voluntary association within any definition in the books or within the meaning of section 13 of the act to regulate commerce. It is also argued by the defendants that the case should not be decided on a complaint brought by the bureau, "since if an appeal were taken from the decision of the Commission to the courts, there would be no responsible party to answer for costs in case the defendants should prevail."

Complaint is brought by the bureau on behalf of one of its subscribers, the Osborne Manufacturing Company, of Cleveland, Ohio. The Osborne Company is engaged in the manufacture of wire brushes and brooms at Cleveland, Ohio, and also at Durham, N. H., both points being situated in Official Classification territory. From each of its factories it ships to every state and territory of the Union, its shipments in all cases being in less than carload lots and being, therefore, subjected to first-class rates. The Osborne Company also manufactures various small hardware specialties, as well as bristle and

fiber brushes of the coarser grades. Only the wire brooms and brushes, however, were included in the complaint here.

Wire brushes not intended for toilet use are a rough, heavy, low-priced product. Samples of many of them have been displayed to the Commission. Without undertaking to describe all the different varieties in detail, it may be said that the backs of these brushes are made of plain, unfinished hardwood blocks. The brush parts are made of ordinary brush wire and the parts are put together with common wire nails. They serve various uses, such as scrubbing or cleaning meat blocks in butcher shops, or cleaning the following articles: Metal surfaces, architectural iron work and elevator fronts, paint from stoneware, metal castings, flues and chimneys, scale from hot billets of steel, sweeping streets and stables, and various other uses. Other wire brushes manufactured by the Osborné Company are entirely of metal, having no wooden back, but are intended for rough and heavy work, and, so far as value and liability to damage go, are included in what is hereafter said.

These wire brushes and brooms are practically immune from damage while in course of transit. They can not be broken by rough treatment, nor can they be injured by being wet unless the exposure to water should be excessive and prolonged. They are of course subject to injury by fire, but not by any other cause. It was stated by the general manager of the Osborne Company that his concern had not in fifteen years had any occasion to make claim for damage in transit on this class of goods.

Wire brushes are nested in packing by forcing the wires of two brushes together, so that the two will go within a space that would otherwise be occupied by one were this not done. Bristle and fiber brushes can not be so nested. The weight of wire brushes per cubic foot, when packed for shipment, ranges from 22½ to 55 pounds, the average weight per cubic foot being 38 pounds. A counter display case containing a variety of small brushes contains 2 cubic feet and weighs 45 pounds. No other form of shipment is made, however, weighing less than 36 pounds per cubic foot, and the average of all shipments is as above stated.

These brushes in value per cubic foot range from \$2.70 for the counter display case, above referred to, to \$10.80 for the rotary wire brush made entirely of metal. The average value per cubic foot of all shipments of wire brushes made by the Osborne Company is \$6.15.

The annual shipments of wire brushes and brooms made by the Osborne Company amount to from 600,000 to 800,000 pounds. The Osborne Company manufactures and ships about 20 per cent of the total output of these brushes and brooms in the United States.

In Official Classification territory fourth-class rates are approximately 50 per cent of first-class rates; third-class rates are approximately 60 per cent to 65 per cent of first-class rates, and second-class rates are approximately 80 per cent to 85 per cent of first-class rates.

Complainant showed that the refusal of the carriers in Official Classification territory to make a separate classification for wire brushes not intended for toilet use causes these rough products to pay the same rate per 100 pounds as the finest grades of toilet brushes. For purposes of comparison there were produced before the Commission certain fine tooth brushes and fine hair brushes. Tooth brushes were shown, for instance, which when packed weigh 36 pounds per cubic foot, and are worth in the neighborhood of \$60 per cubic foot. This valuation, it was testified by a dealer in these commodities, is a conservatively estimated average for all kinds of tooth brushes, both high priced and low priced. It was also testified by a dealer in hair brushes that, taking all grades together, the average value per cubic foot of his shipments would be \$27, and the weight per cubic foot 36 pounds. It was also testified that these toilet brushes were easily susceptible to injury by rough handling or by dampness. They are made of bristles subject to damage by discoloration and with polished backs, which are easily marred or discolored.

Many brushes of the coarser and less expensive sorts, made from bristles, rice root, bassine, tampico, and other materials were shown. Horse brushes of these various materials range in weight per cubic foot from 12½ pounds to 25 pounds, the average being about 18½ pounds. Scrubbing brushes of the above materials range in weight from 12½ pounds per cubic foot to 21 pounds per cubic foot, the average being about 16½ pounds. In value these cheaper bristle and fiber brushes range when packed for shipment from 90 cents per cubic foot to \$27 per cubic foot.

It is claimed by defendants that wire brushes should not be separated from bristle and fiber brushes in the classification, for the reason that wire brushes and bristle and fiber brushes in many cases are used for the same purposes and therefore are in competition with each other in the market. As to some wire brushes, such as horse brushes, this is perhaps true. Street sweepers' brooms are also made both of fiber and of wire. The testimony is, however, that the two sorts of brooms answer different uses and are not really in competition one with the other.

An examination of the Western Classification shows that the distinction contended for by complainant is there made, separate headings being provided for brushes made of bristle and hair in boxes; for silver-mounted brushes; for steel bristle brushes in bundles; for

steel bristle brushes in boxes; and for vegetable fiber brushes in bundles as well as in boxes, and also for wood fiber brushes in bundles as well as in boxes.

The complaint is well brought. Forest City Freight Bureau is certainly included within the language of section 13, which provides that "any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society," etc., may bring complaint under the act. If it were intended that only those from whom a judgment for costs could be collected should be allowed to make complaint before the Commission, it would have been so stated in the act. The language used is so broad and general as to give any person or any association or society, however formed, the right to bring complaint and to secure a finding from the Commission. Even the absence of direct damage to the complainant, the act specifically provides, is not ground for dismissing any complaint.

It is apparent from the testimony and also from an examination of the various sorts of brushes now included in the Official Classification as brushes, not otherwise specified, that the wire brooms and brushes of the sort manufactured by the Osborne Company should take a lower rate than is provided for bristle and fiber brooms and brushes. They are heavier, less likely to be damaged while in shipment, and on the whole of less value than the bristle and fiber brushes.

Without at all receding from or weakening previous utterances of this Commission to the effect that differences in value or differences in cost of transportation would not in all cases suffice to secure a change in classification, it is apparent that in this case there is a broad line of difference between fiber and bristle brushes on the one hand and wire brushes on the other, and that justice requires that this difference should be recognized by the carriers in their classification and that a separate heading should be made for "wire brushes and brooms, not toilet, in cases."

Complainant has asked that these wire brushes and brooms be placed in the fourth class. The Commission is not convinced that this should be done. The raw materials from which wire brushes are manufactured are in the fourth class, and no reason appears why these brushes should not follow the general rule of classification and take a somewhat higher rating than is given to the raw materials from which they are manufactured.

It is therefore directed that these wire brushes and brooms, not toilet, in cases, when shipped in interstate or foreign commerce in less than carload lots, shall be placed in the third class.

No. 1188.

ROMONA OOLITIC STONE COMPANY
v.
VANDALIA RAILROAD COMPANY.

Submitted December 24, 1907. Decided February 4, 1908.

1. A rule of a carrier subject to the act to regulate commerce, by which shipments of stone from nonscale points are billed from such points at weights equal to the marked capacity of the cars, subject to correction when weights are taken, is unreasonable, because upon such cars as are not in fact weighed before delivery the carriers proceed to collect freight upon such marked capacity weights. A change of such rule to a rule that such shipments shall be billed at the published carload minimum held to be also indefensible.
2. Defendant carrier ordered to desist and refrain from showing purported weights upon its billing until such weights shall have been ascertained either by weighing or by some fair method of computation from cubic contents.

Walter Kessler for complainant.
John G. Williams for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant is an Indiana corporation engaged in quarrying and shipping stone from Romona, Ind., to its customers in various states. By this complaint it asks the Commission to order the defendant to cease and desist from its present practice of billing carload shipments of stone at the marked capacity of the cars. It also asks that defendant be ordered to bill said shipments at the published carload minima of the cars.

It appears that the marked capacity of cars furnished for loading stone is much in excess of the carload minima provided by the tariffs. It also appears that the physical capacity of the cars is somewhat in excess of the marked capacity; also that as to many shipments the complainant loads in excess of the marked capacity. As to many other shipments, however, it loads but little above the carload minima, for the reason that orders from customers are in many cases less than the physical capacity or even the marked capacity of cars furnished, although in excess of the minima provided by the tariffs.

At Romona, where this stone is loaded by complainant, there are no scales. Cars must therefore be weighed in transit if freight charges

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are to be based upon correct weights. It is the practice of defendant to bill carload shipments of stone at Romona at the marked capacity of the cars. The rules of the defendant provide that these cars shall be weighed while in transit and that the weights so put upon the bills as estimated weights shall be corrected to correspond to the actual weights as shown by the scales. Complainant asserts, however, that a considerable percentage of cars of stone shipped by it are never actually weighed and that the weights placed upon the billing at the point of origin are therefore in some instances never corrected. This forces the consignees of such shipments to either pay more than the rightful transportation charges, or to refuse to receive the stone.

A showing was made in the testimony that 412 cars were shipped by complainant over the lines of defendant during the seasons 1906-7. Of these 412 cars 41 were delivered and freight collected upon weights estimated at the marked capacity of the cars. It is stated by defendant that 11 of the 41 cars were never weighed, and that as to the remaining 30 the clerks failed to correct the billing. Of these 412 cars 77 were moving to points outside of the state of Indiana. Of the 77 cars so moving in interstate transportation 33 were delivered without a correction of billing.

Complainant's contention is that no rule or practice of the railroad company should cause it to pay freight upon more than the actual weight, even though refunds be promptly made. He further shows that considerable dispute and even litigation have arisen over the refunds upon the shipments upon which it is claimed freight was collected for more than actual weights.

Defendant admits practically all the facts as above stated, but contends, first, that its rules as to billing and weighing are not within the jurisdiction of the Commission, and, second, that its practice is a reasonable and proper one. On the second point it says that the rule was adopted to encourage the loading of cars to capacity, thus helping to secure the fullest use of equipment.

Our conclusions are:

Although it is not in the record, it may be added that the Commission finds that other carriers subject to the act, handling large tonnages of various products, do not attempt to indicate weights of shipments upon their billing until such weights have been actually determined.

This rule is certainly placed under the jurisdiction of the Commission by section 15 of the act to regulate commerce, which provides that the Commission is authorized after full hearing upon a complaint if "it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first section of this act, or that *any regu-*

lations or practices whatsoever of such carrier or carriers affecting such rates, are unjust and unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation."

It is apparent that the carrier by its practice here places upon its billing at the point of origin of this stone a weight that is necessarily incorrect. In some cases this weight will be excessive; in others, as appears from the testimony, it will be too small. It only remains for the cars to get past the scales without being weighed for this erroneous weight to be made the basis of a collection of freight money which will be different from the lawful charge.

Complainant asks that these cars be billed at the carload minima. It is evident that this would be quite as unjust and quite as unreasonable as the present practice of billing at the marked capacity of the cars. We perceive no justification for a rule that weights having no real relation to the actual weight of the loads upon the cars shall be placed upon the billing at point of origin. If no weights are shown upon the billing, an actual weighing at the scale points would seem to be more likely than under the practice of applying an estimated weight arbitrarily. -

The practice here is not like the practice provided for by certain tariffs which specify estimated weights for certain articles where weighing is impracticable. There is no provision in the tariff of the defendant for the final collection of the freight upon this stone at an estimated weight; and if there were, the provision would have to provide for some measure of the weight by means of the cubical contents or otherwise.

Defendant should cease and desist from indicating upon its waybills the weight of interstate carload shipments of stone until such weight has actually been determined. The present practice, in a certain percentage of the shipments, compels the receiver of the stone either to submit to an unjust charge with the resulting burden of prosecuting a claim for refund, or else to refuse to receive the shipment.

If it is desired to place upon the waybills statements of the marked capacity of the cars as such, there can of course be no objection to such practice, provided such statements do not purport to show weights of the loads upon the cars to be used as a basis of collections of charges from the consignees.

An order will be entered accordingly.

No. 1281.

FOREST CITY FREIGHT BUREAU

v.

ANN ARBOR RAILROAD COMPANY; ASHLAND & WESTERN RAILWAY COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; BESSEMER & LAKE ERIE RAILROAD COMPANY; BOSTON & ALBANY RAILROAD COMPANY; BOSTON & MAINE RAILROAD; BUFFALO & SUSQUEHANNA RAILWAY COMPANY; CLEVELAND & BUFFALO TRANSIT COMPANY; CANADIAN LAKE LINE; CENTRAL RAILROAD COMPANY OF NEW JERSEY; CENTRAL INDIANA RAILWAY COMPANY; CENTRAL VERMONT RAILWAY COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO, INDIANA & EASTERN RAILWAY COMPANY; CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS; CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, AND JUDSON HARMON, RECEIVER THEREOF; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; DETROIT & CLEVELAND NAVIGATION COMPANY; DETROIT & BUFFALO STEAMBOAT COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; DETROIT, TOLEDO & IRONTON RAILWAY COMPANY; ERIE & WESTERN TRANSPORTATION COMPANY; ERIE RAILROAD COMPANY; EVANSVILLE & INDIANAPOLIS RAILROAD COMPANY; EVANSVILLE & TERRE HAUTE RAILROAD COMPANY; GRAND RAPIDS & INDIANA RAILWAY COMPANY; GRAND TRUNK RAILWAY COMPANY; HOCKING VALLEY RAILWAY COMPANY; LAKE ERIE & WESTERN RAILROAD COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; LEHIGH VALLEY RAILROAD COMPANY; MUTUAL TRANSIT COMPANY; MAINE CENTRAL RAILROAD COMPANY; MARIETTA, COLUMBUS & CLEVELAND RAILROAD COMPANY; MICHIGAN CENTRAL RAILROAD COMPANY; MERCHANTS MONTREAL LINE; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; NEW YORK,

ONTARIO & WESTERN RAILWAY COMPANY; NORFOLK & WESTERN RAILWAY COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; PENNSYLVANIA COMPANY; PERE MARQUETTE RAILROAD COMPANY, AND JUDSON HARMON, RECEIVER THEREOF; PHILADELPHIA & READING RAILWAY COMPANY; PITTSBURG & LAKE ERIE RAILROAD COMPANY; RUTLAND RAILROAD COMPANY; RUTLAND TRANSIT COMPANY; SOUTHERN RAILWAY COMPANY; SOUTHERN INDIANA RAILWAY COMPANY; TOLEDO & OHIO CENTRAL RAILWAY COMPANY; TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY; VANDALIA RAILROAD COMPANY; WABASH RAILROAD COMPANY; WEST SHORE RAILROAD COMPANY, AND WHEELING & LAKE ERIE RAILROAD COMPANY.

Submitted January 10, 1908. Decided February 4, 1908.

1. Complainant is an association within the meaning of section 13 of the act and is therefore competent to bring complaint before the Commission.
2. The inclusion of wire coat hooks, packed in cases, when shipped in less than carload lots, in the third class in Official Classification territory is not shown to be unreasonable, and the complaint is dismissed.

H. H. Henry for complainant.

John H. Clarke for New York, Chicago & St. Louis Railroad Company and Delaware, Lackawana & Western Railroad Company.

Squire, Sanders & Dempsey and *C. T. Brooks* for Central Indiana Railway Company; Chicago, Indiana & Eastern Railway Company; Grand Rapids & Indiana Railway Company; Erie & Western Transportation Company; Pennsylvania Railroad Company; Toledo, Peoria & Western Railway Company; Vandalia Railroad Company; and Pennsylvania Company.

H. Murray Andrews for Erie Railroad Company.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Boston & Albany Railroad Company; Michigan Central Railroad Company; Chicago, Indiana & Eastern Railway Company; Lake Erie & Western Railroad Company; Pittsburg & Lake Erie Railroad Company; West Shore Railroad Company; Rutland Railroad Company; and Rutland Transit Company.

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John E. Morley and Kline, Tolleys & Goff for Baltimore & Ohio Railroad Company and Baltimore & Southwestern Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complaint here is directed against 59 carriers, which have adopted and are acting under the so-called Official Classification. Complainant asks that a change be made by these carriers in the classification of wire coat hooks packed in cases, when shipped in less than carload lots. As the classification now stands these coat hooks are in the third class, being included in "hardware specialties not otherwise specified." It is asked that they be transferred to the fourth class.

The complaint is brought by the Forest City Freight Bureau. The testimony shows that the method of organization of the bureau is as follows: An office is maintained by J. F. Charles, the manager of the bureau. Members become such by entering into written contracts with the bureau by which they pay a stipulated annual fee. The bureau undertakes to perform certain services in the adjustment of disputes with railways and in the prosecution of necessary proceedings. It is claimed by defendants that the bureau is not a voluntary association within the meaning of section 13 of the act to regulate commerce. Defendants therefore claim that the case should not be decided on the complaint brought by the bureau, saying that if an appeal were taken from a decision of the Commission to the courts, there would be no responsible party to answer for costs in case the defendants should prevail.

The complaint here is brought by the bureau on behalf of one of its subscribers, the Columbian Hardware Company. This company is engaged in the manufacture of various specialties, including among other products the wire coat hooks referred to in the complaint.

Exhibits consisting of samples of these coat hooks were brought before the Commission and placed in evidence. The hooks are made of ordinary wire, bent by machinery into the shape of a hook, with a thread cut upon one end of the hook in order that it may be screwed into walls or ceilings. These are the ordinary wardrobe coat hooks of commerce. Many of these hooks receive no finish except that given the wire in its process of manufacture; others are japanned; still others receive a copper finish; others are finished with a coating of brass, and a very small percentage of the output is plated with nickel.

When ready for shipment one-half gross of these hooks are packed in a pasteboard carton, 24 of these cartons being placed in a substantial wooden case. The case containing 12 gross as delivered to

the carriers measures 9½ by 17 by 25 inches and weighs 120 pounds. Its value is approximately \$5.

These hooks are practically indestructible and are not liable to injury in transit except by fire. The Columbian Hardware Company ships these hooks from its factory in Cleveland, Ohio, to every state in the Union. It has one competitor at Shelby, Ohio. Its other competitors are situated in the eastern part of Official Classification territory. It produces about 25 per cent of the total output of these hooks in the United States. Its output is about 65,000 gross per year.

The wire from which these coat hooks are manufactured now takes fourth-class rates. Some six or eight months ago this wire was raised from a special class slightly higher than fifth class to fourth class. When ready for shipment the wire is simply wrapped in paper.

Complainant produced before the Commission a large bronze spring-hinge, which is manufactured by the Columbian Hardware Company and which now takes third-class rates, the same as are given the coat hooks, it being also classed as a "hardware specialty not otherwise specified." Twenty-one pair of these hinges, packed, will weigh 415 pounds and are contained in a case 9½ by 17 by 25 inches, the same as the 12 gross of coat hooks. The value of this case and contents is approximately \$368. These hinges are finished in bronze and would be tarnished by dampness; also they are made of cast metal and are liable to breakage by rough handling.

It was shown that cast-iron coat hooks perform the same function as wire coat hooks and are somewhat heavier. These cast-iron coat hooks now take third-class rates. It was also shown that there are a number of articles of less value than the coat hooks, which are also in the third class, such as bushing bungs, cast-iron clamps, iron corners for trunks, stove-cover lifters, can openers, stove plates, clock weights, etc.

Third-class rates in Official Classification territory are approximately 20 to 25 per cent higher than fourth-class rates. A reduction in the classification of these coat hooks with the corresponding reduction in the rate would inure to the benefit of the manufacturer, it being testified by the manufacturer's sales agent that its selling price would probably not be reduced even though the classification should be changed. There is no evidence to show that the Columbia Hardware Company is at any competitive disadvantage in any market by reason of this classification.

Our conclusions are:

Forest City Freight Bureau is an association, within the meaning of section 13. While it is evident that the wire coat hooks discussed in the evidence are but little more valuable than the raw material from

which they are made and no more liable to damage in transit, still we think that the present classification is not unreasonable. The comparison as to value made with the spring hinges shows a wide discrepancy, but it is not shown that these hinges are typical of the bulk of the articles placed in the third class. It appears, moreover, that many articles of less value than wire coat hooks are also in the third class. It is true that these articles instanced at the hearing by the defendants are generally made of cast metal somewhat more liable to breakage than the wire coat hooks. It does not appear, however, that any considerable loss to the carriers is caused by breakage of these cast-iron hardware specialties.

The complaint will be dismissed.

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No. 933.

**IN THE MATTER OF RATES, PRACTICES, ACCOUNTS, AND
REVENUES OF CARRIERS SUBJECT TO THE ACT TO
REGULATE COMMERCE.**

February 4, 1908.

Practices of certain carriers relative to interstate shipments declared illegal and criminal prosecutions requested to be instituted.

John H. Marble for the Commission.

P. F. Dunne for the Southern Pacific Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

A hearing was held in the city of San Francisco, Cal., pursuant to the above order of the Commission, on the 2d, 3d, and 4th days of October, 1907. From the evidence there adduced we find:

1. The existence of an extensive system of preferential rates granted to certain shippers on state business by the Southern Pacific Company. The record discloses a list of 108 firms, corporations, and individuals who enjoy what are known as "special inside rates"—less than the rates published to the general public—on the movement of certain designated traffic between points within the state of California. (Pp. 2, 3, 4, 5, 6, 7, 48, 49, 60, 61, and 121 of printed transcript of testimony.)

2. That shippers paid the full published rate in the first instance and were allowed the refund upon claims which went through the auditing department under instructions from the traffic department that such special rates should apply upon intrastate shipments without tariff authority. (Pp. 2, 3, 4, 5, 6, and 7, printed transcript.)

3. That such refunds amounted in various months of the years 1906 and 1907 to from \$30,000 to \$50,000 per month. (P. 45.)

4. That such refunds given to one firm amounted to the sum of \$23,994 during the period from April, 1906 (the date of the San Francisco fire when all previous records were destroyed), to September 24,

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1907, and such refunds to other shippers ranged in amount from \$13,690 to \$22,251. (Pp. 33, 37, 42, 57, and 99.)

5. That such refunds or discounts from the regular rates have been continued for a long period and up to the date of the hearing in October, 1907. (Pp. 2, 3, 4, 5, 6, 7, and 45.)

6. That many of such State shippers to whom such refunds were allowed were large interstate shippers. (Pp. 6, 52, 54, 56-60, 76, 79-80, 82-83, 86-89, 103, 108-109, 112, 121 *et seq.*)

7. That one of such shippers admitted at the hearing that the granting of such inside rate on the state movement influenced the routing of subsequent interstate shipment of such traffic over the rails of the Southern Pacific Company. (P. 108.)

8. That in one instance the general freight agent of the Southern Pacific Company provided, by voucher dated July 31, 1906, for the payment to an interstate shipper of one-half of the local rate which such shipper had paid to another railroad for the movement from point of origin to a Southern Pacific terminal where the traffic began its interstate journey over the Southern Pacific lines. (Pp. 33-35.)

9. That there existed for years an understanding between the Southern Pacific Company and the Santa Fe Company and certain shippers of dried fruit, that the traffic which moved into points of concentration for transcontinental shipment should be entitled at the end of the shipping season to a refund of one-half of the local state rate charged at the time of the original movement. (P. 85.)

10. That the voucher books containing the so-called refunds on State shipments also contained records of refunds given upon interstate shipments. (Pp. 7, 8, 12, 15-19, 23-25, 27-35, 40, 43, 44, and 80.)

11. That some of such refunds upon interstate business were paid by the special written direction of freight officials after the claims had been denied by the auditing department. (Pp. 16-18, and 23-25.)

The justification offered by the officials and representatives of the Southern Pacific Company for the practices revealed was that in general they were made necessary to secure traffic which shippers would move otherwise were such rebates not granted.

In view of the foregoing it is directed that a copy of the transcript of the testimony in this matter be forwarded to the district attorneys of the United States for the several judicial districts wherein offenses against the act to regulate commerce were committed as shown by this record, and that such officials be requested to institute such prosecutions under the law as may be warranted.

No. 1217.

JOHN B. MANNING

v.

CHICAGO & ALTON RAILROAD COMPANY AND LOUISIANA
& MISSOURI RIVER RAILROAD COMPANY.

Submitted November 21, 1907. Decided February 10, 1908.

The powers conferred upon the Commission by the act were not intended to be exercised for the purpose of ascertaining whether an individual stockholder has been wronged by such transactions as those in question in this case. The investigation which the complainant desires is not required by considerations of public interest or the proper discharge of official duties and should therefore be refused.

John J. Cushing for complainant.

Winston, Payne, Strawn & Shaw for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The petition in this case alleges that complainant has for ten years been the owner of 123 shares of the common stock and 51 shares of the preferred stock of the Louisiana & Missouri River Railroad Company (hereinafter called the Missouri Company); that the Chicago & Alton Railroad Company (hereinafter called the Alton Company) has been for many years the owner of all the capital stock of the Missouri Company, with the exception of 313 shares of the common and 167 shares of the preferred stock; that after the Alton Company acquired the capital stock of the Missouri Company a lease was made of the Missouri Company to the Alton Company; that the Missouri Company has been a profitable enterprise for many years and that its earnings have been absorbed by the Alton Company. Further, the petition avers that the directors of the Alton Company and the Missouri Company are practically the same; that the accounts of the latter company are kept by officers of the former; that complainant has for many years made efforts to secure a statement of the earnings and expenses of the Missouri Company and information regarding

the lease, but has been unable to obtain the same; that complainant believes the Alton Company, under the lease, has neglected to keep a separate statement of the earnings of the two companies and has diverted the earnings of the Missouri Company for the benefit of the Alton Company.

Thereupon complainant asks that the Commission make due investigation of the matter and an examination of the accounts of the Alton Company covering its operation of the Missouri Company since the year 1871, that being the date of the lease as stated in the complaint; that it require the Alton Company to furnish a statement of the earnings, expenses, and improvements of the Missouri Company for every year since the execution of said lease; that it require the Alton Company hereafter to keep a separate set of accounts covering the operation of the Missouri Company, and that complainant have such other relief as may be appropriate.

In answer to this petition defendants filed a notice in the nature of a demurrer setting up: First, that the matters and things contained in the petition are not within the jurisdiction of the Commission; second, that power has not been conferred upon the Commission to grant the relief prayed for; third, that upon the face of the petition complainant has been guilty of gross laches.

The lease referred to in the petition is not set out in the record; but the following memorandum in the annual report of the Missouri Company to the Commission for the year ending June 30, 1907, indicates that it is no longer in force:

On the 13th day of November, 1894, an agreement was entered into with the Chicago & Alton Railroad Company providing that the latter company will assume to pay all interest coupons as they become due and will pay the principal of all mortgage bonds at maturity, also 7 per cent per annum dividends on the guaranteed preferred stock, and will pay the floating debt of this company, the consideration of the agreement being the cancellation of the lease of August 1, 1870, and the transfer to the Chicago & Alton Railroad Company of all the property of this company.

It is assumed that the lease of August 1, 1870, mentioned in this memorandum, and the lease of 1871, referred to in the petition are one and the same. It is also inferred from the foregoing facts that the execution of this lease effected a practical merger of the two companies for all operating purposes. The agreement of 1894, by which the lessor's interest was purchased by the lessee, apparently made the merger complete.

It is virtually admitted by complainant, and all the circumstances so indicate, that his purpose in prosecuting this proceeding is to secure, with the aid of the Commission, information which will enable him to determine whether or not it would be advisable to bring a suit in equity for an accounting against the Alton Company.

The authority of the Commission to entertain formal complaints, which are required to be served on a carrier and heard on due notice, is defined and limited by the thirteenth section of the act, which provides as follows:

That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of *anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof* may apply to said Commission by petition, which shall briefly state the facts.

Without reciting the various matters of which complaint may be made as provided in this section, it is clear that the facts alleged in the petition in this case and above stated do not disclose the violation of any provision of the regulating statute. Whatever may be the equities of complainant as a minority stockholder of the old Missouri Company, he fails to show that anything has been done by defendants which the act prohibits or anything omitted which the act enjoins. In other words, nothing is alleged or made to appear which would give the Commission jurisdiction to make a corrective order. It follows that complainant is not entitled to maintain this proceeding and his petition should therefore be dismissed.

If this petition be regarded as an application to the Commission to exercise its powers of investigation and inquiry under the twelfth section of the act, we are constrained to deny the application. It is not shown or even alleged that any public purpose would be subserved by such an investigation. On the contrary, it is admittedly desired in order to aid complainant in maintaining a private suit if the disclosure developed anything of which he could take advantage. It is not claimed that the business of the defendants or either of them has been improperly conducted in any respect which *concerns the public*. The petitioner may have suffered some injustice as the result of the merger of these two companies, but if so it is because his rights as a stockholder have been infringed. The powers conferred upon the Commission were not intended to be exercised, as we believe, for the purpose of ascertaining whether an individual stockholder has been wronged by such transactions as those in question. The investigation which the petitioner desires is not required by considerations of public interest or the proper discharge of official duty, and should therefore be refused.

An order will be entered accordingly.

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No. 1274.

MINNEAPOLIS THRESHING MACHINE COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Submitted December 20, 1907. Decided February 10, 1908.

Complainant is entitled to recover from defendant the sum of \$640.52, as reparation for unjust and unreasonable charges on specified shipments of farm machinery made under the rates complained of in this case.

W. H. Ritchie for complainant.

E. B. Peirce and *M. V. Seymour* for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainant is a manufacturer of threshing machines, farm engines, cornshellers, and other agricultural implements. Its factory is located at Hopkins, a suburb of Minneapolis, Minn. In May, 1907, complainant maintained branch houses for the sale of its machines at El Reno, Okla., Dallas, Tex., and Kansas City, Mo.

On June 8, 1907, complainant shipped from its Dallas branch to its Kansas City branch 6 cars of its products to be repaired. On July 22, 1907, still another carload was shipped for the same purpose from Dallas to Kansas City. All these shipments moved over the defendant's line. Only the first 6 are included in the complaint, but by stipulation all were included in the testimony, and all may be included in the order of the Commission. The total weight of the 7 shipments was 177,922 pounds, and the freight money paid therefor at the 72-cent rate amounted to \$1,281.04.

At the time these shipments were made the published rate applicable thereto from Dallas to Kansas City was 72 cents per 100 pounds, this being the full one-way rate. At the same time, however, tariff No. 20 S, supplement No. 32 to I. C. C. No. 461, Southwestern Tariff Committee tariff of freight rates on commodities applying from

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Texas points, which tariff had been filed on behalf of defendant, provided as follows:

Shipments, whole or in part (except live stock), which have paid full standard rates may be returned to shipper at point of origin at one-half the authorized rate in direction of first movement.

Appended to this rule was the following note:

Returned shipments not to be restricted to the line via which same originally moved in the opposite direction.

According to this tariff, the 7 carloads in question would have moved from Dallas to Hopkins at a rate of 43½ cents.

The distance from Dallas to Kansas City is 625 miles, while the distance from Dallas to Hopkins is 1,240 miles, Kansas City being directly intermediate between Dallas and Hopkins.

Since these shipments moved the one-half rate provision for return movements has been amended so that it now reads as follows (Texas tariff No. 20 S; supplement No. 47 to I. C. C. No. 461, effective December 13, 1907):

Shipments whole or in part (except as noted below) may be returned to shipper at point of origin or to points in the States of Kansas, Nebraska, Missouri, Iowa, Minnesota, Illinois, Wisconsin, and South Dakota; also to New Orleans, La.; Vicksburg, Miss.; Natchez, Miss.; Bessemer, Birmingham, and Ensley, Ala.; Memphis, Tenn.; Paducah, Ky.; Evansville, Ind.; Henderson, Owensboro, and Louisville, Ky.; New Albany and Jeffersonville, Ind.; Cincinnati, Ohio; Newport and Covington, Ky.; also to Hammond, Whiting, and Grasseli, Ind., at one-half the authorized rate.

This supplement, No. 47 to I. C. C. 461, cancels the rule containing the note above quoted from supplement 32, but fails to state whether or not the half rate on returned shipments may be granted to shipments which have moved in the first instance via other lines.

It appears that at the present time, therefore, the shipments made as above stated by complainant would take a rate of 36 cents only.

It was testified by an agent of defendant that the tariff providing half rates on return shipments was framed without knowledge of the fact that manufacturers frequently maintain branch houses, and therefore provided only for return to point of origin. The present amendment was made to cure this defect.

Defendant expressly refused to admit that the full one-way rate imposed on the shipments in question was unreasonable, although indicating its willingness to grant the demand of complainant if it can legally do so.

Defendant caused to be entered in the record an exception to the jurisdiction of the Commission in reparation matters, stating its desire "to go on record as not consenting or in any way conceding that the Commission has authority to order reparation."

Upon these facts we reach the following conclusion:

In any case where the published rate is unjustly discriminatory the Commission has jurisdiction to order reparation to shippers

injured thereby. It is conceded that complainant might have shipped the seven carloads of farm machinery in question to Hopkins, Minn., at a rate of 43½ cents. Such shipments, if they had been made, would have moved through Kansas City en route. The shipper chose, however, instead of sending the machines a distance of 1,240 miles to Hopkins, to send them a distance of only 625 miles to the intermediate point, Kansas City, with the resulting charge by the carrier of a rate more than 50 per cent higher than would have applied if they had been carried to the more distant point. The defendant has not attempted to show any conditions, competitive or otherwise, which would justify a higher rate for the shorter than for the longer distance. On the contrary, the tariff now in force, correcting the inadvertent omission in the tariff under which these shipments moved, and the other circumstances disclosed, indicate that there is no reason for the disproportionate charge which complainant was compelled to pay. Moreover, since the rate of 43½ cents to Hopkins must, for the purposes of this case, be presumed to be reasonable, a higher charge to Kansas City than the rate of 36 cents which the defendant now voluntarily accords, when applied to the same traffic and under the same conditions, should be held to be excessive. It follows that complainant is entitled to reparation for the sum of \$640.52, and an order will be entered accordingly.

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No. 1232.

MERCHANTS TRAFFIC ASSOCIATION.

PACIFIC EXPRESS COMPANY.

Submitted October 30, 1907. Decided February 10, 1908.

Complaint is made of a general special rate of \$2 on milk and cream from St. Paul, Nebr., to Denver, Colo., lawfully in force only because of inadvertent omission of defendant to file its mileage scale of milk and cream rates under which the lawful rate between these points would have been 58 cents. After this complaint was brought defendant filed on short notice mileage tariff naming the 58-cent rate. This being satisfactory to the parties it was stipulated on the hearing that the complaint might be dismissed. In making the stipulation effective the Commission orders the maintenance of the 58-cent rate for a period of not less than two years, but holds the case under further advisement for purposes stated in the opinion.

Albert L. Vogl for complainant.

W. B. Hodges for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This complaint, filed on August 23, 1907, challenges as exorbitant and unreasonable, and therefore in violation of the act to regulate commerce, rates then in effect, under the published tariffs of the defendant, for the transportation of milk and cream between various points in the States of Nebraska and Colorado. It is directed more particularly against a rate of \$2 per 100 pounds for the movement of those commodities between St. Paul, in the former state, and Denver, in the latter.

Upon the hearing the following facts were disclosed: On November 3, 1906, the defendant filed with the Commission its classification, transfer tariff, and general tariffs; but it failed to file its commodity tariffs. The result was that the only authority of record for the transportation of milk and cream between St. Paul

and Denver was a rate of \$2.75 per 100 pounds. Express companies were not brought within the terms of the act until the amendatory act of June 29, 1906, was passed, and it was not until some months afterwards that they were able to prepare and file all their tariffs as required by law. During the interval, as is well understood, there were some irregularities on their part in that the rates actually charged and collected by them were not always those provided in their published tariffs. And this defendant during that period was in fact charging and collecting only 58 cents per 100 pounds, when its published rate was \$2.75.

On July 17, 1907, the defendant filed its commodity tariffs, intending, as appears from its answer and from statements made by its counsel at the hearing, to make lawfully effective the 58-cent rate which it had actually been charging and collecting for the movement of milk and cream between St. Paul and Denver. It inadvertently omitted, however, to file a distance scale with the schedule last referred to and as a consequence the only rate that could lawfully be applied on milk and cream was a new general special rate, which seems to be analogous to a class rate, of \$2 per 100 pounds. Immediately upon discovering the error the defendant promptly notified its shippers of the oversight and also advised them of its intention to bring the facts at once to the attention of the Commission with a view to securing its authority to refund, upon such shipments as might move under the \$2 rate, the difference between that rate and the rate of 58 cents per 100 pounds which it had intended to make effective. It also at once requested special authority to correct the mistake by filing a tariff on short notice; and this authority having been given, the prior rate of 58 cents was soon restored. An examination of the records of the Commission reveals the fact, however, that the tariff schedule, I. C. C. No. 197, thus put in effect on short notice on September 8, 1907, contains a clause providing for its expiration on October 9, when it was to be superseded by another schedule. This new schedule, I. C. C. No. 198, which was duly filed to become effective on October 10, was arranged on a basis that would seem to yield a rate of 80 cents per 100 pounds between St. Paul and Denver. But before it became effective proceedings were instituted and an order was entered in the United States circuit court for the northern district of Illinois, restraining the putting into effect and the collection of the proposed new rates until the question of their reasonableness could be examined in an appropriate proceeding before this Commission, and reserving jurisdiction for further proceedings in that court in case such an inquiry could not be prosecuted before the Commission within a reasonable time. Under the restraint of that order, the previous schedule, I. C. C. No. 197, although it has

expired according to its terms, seems to be regarded by the defendant as the only basis upon which its charges may be assessed. And it is now charging between St. Paul and Denver the rate of 58 cents per 100 pounds provided in that schedule, which rate was admitted at the hearing to be satisfactory both to the defendant and to the complainant. In the meantime the Fairmont Creamery Company, acting under the restraining order of the court, has filed its complaint, docket No. 1292, against this defendant as well as against other express companies and numerous railroad companies, making a comprehensive issue of their milk and cream rates between these and many other points.

In view of all the circumstances in the case the stipulation of the parties, verbally presented at the hearing, for the dismissal of the proceeding may be carried into effect. But we shall enter the usual order requiring the defendant, for a period of not less than two years, to maintain in effect between St. Paul and Denver a rate not exceeding 58 cents per 100 pounds. The hearing of the complaint of the Fairmont Creamery Company against this and other defendants may require some further order in this case, and for this purpose the record will be held under advisement.

An order will be entered in accordance herewith.

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No. 1425.

IN THE MATTER OF THE APPLICATION OF THE GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY FOR EXTENSION OF TIME TO COMPLY WITH "AN ACT TO PROMOTE THE SAFETY OF EMPLOYEES AND TRAVELERS UPON RAILROADS BY LIMITING THE HOURS OF SERVICE OF EMPLOYEES THEREON."

Filed January 15, 1908. Denied February 14, 1908.

A petition for relief under this act does not show "good cause" when it merely alleges that the law ought not to be enforced at certain stations or classes of stations because the number of train orders handled is small and there is no need of increasing the force of employees.

John I. Hall for petitioner.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The Georgia Southern & Florida Railway Company on January 15, 1908, filed its petition for relief under the above-entitled act, which was approved March 4, 1907, and by its terms was to take effect and be in force one year after its passage. The facts stated in this petition which need to be considered may be briefly summarized as follows:

After describing the location of the company's railroad and naming its terminals, it shows that a large number of train dispatchers and telegraph operators are employed in conducting its transportation business; and that at many stations along its lines the work of its telegraphers is quite light and easily performed, particularly at certain named places, ten in number, at which an extension of time is requested. The manner in which operations are carried on at these places is set forth in a letter of the general superintendent of the company which is made a part of the petition, and this is supplemented by an exhibit which purports to show, among other things, the number of train orders and other messages handled by the operators at

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each of these stations, respectively, and the number of hours they were on duty during the thirty days from November 10, 1907, to December 10, 1907. It is evident from this exhibit that the average time occupied by employees at these stations during a twenty-four hour period in handling train orders and receiving and transmitting messages was comparatively small, and that other duties occupied the greater part of their working hours. For the purpose of disposing of this case it will therefore be assumed, whatever the actual fact may be in that regard, that two men could perform all the company's work at each of these stations, including such telegraph service as occasion may require, without severe or unusual exertion of body or mind.

Upon the facts above stated the petition asks that operators and agents at three of the stations named, after handling train orders for nine hours or less, may then be required to work a sufficient number of hours as clerks or otherwise to complete twelve hours in each twenty-four hours; that agents at six of the stations, who handle very few train orders or messages, may be required to remain on duty from thirteen to fifteen hours, and that an agent and operator may be allowed to divide the time during which the office at one station is kept open. The general showing as to each of these nine stations, and the only grounds upon which as to them an extension of time is asked, are the ease with which the entire service of the company is performed by two men and the needless expense of increasing the number. There is no allegation that the company is unable to obtain an additional force of telegraphers or that it has made any effort to do so. Neither is there any allegation that the company has insufficient funds to pay such an increased force as may be necessary to keep these offices open as at present and comply with the limitation upon hours of labor imposed by the act in question. The entire petition in substance and effect is merely an argument to show that additional telegraphers are not needed at any of these stations, and therefore the company ought not to be required to employ them.

It is entirely clear to us that this petition, under the most liberal interpretation of the facts set forth, presents no case for administrative relief, temporary or otherwise, from the requirements of this law.

The only authority conferred upon the Commission in this regard is expressed as follows:

The Interstate Commerce Commission may, after full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

The "proviso" referred to is that part of section 2 which provides that no employee who handles train orders by telegraph or telephone shall be required or permitted to be on duty more than nine hours

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out of the twenty-four at offices continually operated night and day, nor more than thirteen hours out of the twenty-four at offices operated "only during the daytime," except in case of emergency, when four additional hours may be required on not more than three days in any week. *No other provision of the law can be extended or modified by the Commission.*

The power to extend under this proviso is extremely limited. This is evident from the plain import of the language above quoted, from the context to which it relates, and from the obvious purpose of the entire enactment. It seems clear to us that nothing more was intended than to authorize the Commission, in exceptional instances where conditions are unusual or unforeseen, to enlarge somewhat the time allowed to prepare for compliance. Conditions which are common to many railroads or to a substantial percentage of telegraph stations are conditions which must have been taken into account when this law was passed and do not constitute "a particular case" for relief by the Commission.

We are therefore of the opinion that the petition filed by this company does not show "good cause" for extending the period within which it shall comply with the law at the several stations named, because it sets forth no exceptional or peculiar conditions which render observance impracticable at any of these stations, but merely alleges a state of facts tending to show that the law *ought not to be there enforced* on account of the small number of train orders and messages handled and the absence of any need or occasion for increasing the force of telegraphers. This is purely a question of legislative policy which was and must have been determined by the Congress adversely to the company, and the Commission has no right or authority to postpone the taking effect of the act merely because compliance with its provisions will involve inconvenience and financial hardship. The situation at the stations in question, as described in the petition, is in no sense unusual or of recent origin. It is a situation with which the Congress was well acquainted when the law was enacted, for it is practically identical with the situation which has existed for years at hundreds if not thousands of stations and has long been a matter of common knowledge. The act was passed with full understanding that conditions substantially the same as those here considered were so numerous in nearly every part of the country as to be characteristic of railway practice, and the law was evidently intended to apply at stations of this familiar type. To extend the time allowed for compliance at this class of stations, for extension in this case logically involves like extensions in all similar cases, would practically nullify the law during the period of postponement as to a large percentage of the employees for whose benefit

the law was enacted, and presumably deprive the traveling public meanwhile of the added safeguard against accident which the law was designed to secure. The purpose of this enactment and the intention to give it application to all employees who handle train orders, whether much or little of their time is occupied with that duty, are so clear and explicit as not to be open to question. It is equally clear that the authority of the Commission to grant an extension was intentionally limited to instances of special and unforeseen conditions. It was plainly not contemplated that conditions which are common and well known, which are so frequently found on every railway as to comprise a recognized class, should be regarded as a sufficient basis for administrative relief.

Moreover, in this case there is nothing to show nor is it even suggested that the petitioning company will be any better able to comply with the law three months or six months hence than it is at present. This would be equally true for the most part, we apprehend, on other roads and as to stations generally of the class in question. The real desire in such cases is not for temporary postponement, but for permanent exemption. Manifestly this was never intended and therefore the Commission should hold that good cause for extension is not shown because any financial burden which the law imposes may be somewhat harder to bear now than it will be at a later date. The year allowed for preparation by the act itself must have been deemed sufficient in all cases save those of an exceptional character, and any extension which might be properly granted in such cases should have some reasonable relation to the time fixed by the Congress for general compliance.

We perceive nothing in the facts here presented to justify or authorize a relieving order and the petition must therefore be denied.

No. 1029.

JOHN H LEWIS, P. W. WATKINS, A. G. BARTON AND
J. A. FESPERMAN

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Submitted November 18, 1907. Decided February 10, 1908.

Complainants prayed for an order requiring defendant to reestablish facilities at Fanshawe, Okla., for the receipt and delivery of interstate traffic, and at the hearing defendant agreed to put in certain facilities satisfactory to complainants and it appearing that the public interest would be subserved by the fulfillment of this understanding, the complaint is dismissed without prejudice.

John H. Lewis for complainants.

M. L. Bell for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complaint in this case was that the defendant had established a station at Fanshawe, Okla. (formerly Indian Territory), about 1892, which it maintained until 1901, when it was discontinued. Complainants claimed that this resulted in unjust discrimination. The prayer is that an order be made requiring the defendant to establish facilities at Fanshawe for the receipt and delivery of interstate traffic.

The answer of the defendant denies the jurisdiction of the Commission in the premises and also makes general denial of the allegations.

At the hearing much testimony was introduced tending to support the allegations of the complaint, and at the close the representatives of the defendant company stated that it was willing to build a spur track at Fanshawe for the receipt and delivery of freight, and to have stopped every day, upon signal by flag, one passenger train in each direction, and if in the future the business should justify it, a regular station, with an agent in charge, would be established.

Mr. Lewis, one of the complainants, and other citizens of Fanshawe present at the hearing stated that this arrangement would be entirely satisfactory to them at this time, and they were confident

that it would be to the residents of Fanshawe generally, and asked that the complaint be disposed of in accordance with this understanding.

The Commission has, since the hearing, been advised by complainants that defendant has complied with this understanding in respect to passenger facilities.

Since it appears that the public interest, so far as involved, will be subserved by the fulfillment of this understanding, and in the expectation that this will be accomplished by the defendant at an early date, the Commission will not review the facts or express an opinion upon the merits of the controversy, but an order will be entered dismissing the case without prejudice.

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No. 1425.

IN THE MATTER OF THE PETITIONS OF VARIOUS CARRIERS FOR EXTENSION OF TIME WITHIN WHICH TO COMPLY WITH "AN ACT TO PROMOTE THE SAFETY OF EMPLOYEES AND TRAVELERS UPON RAILROADS BY LIMITING THE HOURS OF SERVICE OF EMPLOYEES THEREON."

Submitted February 29, 1908. Decided March 2, 1908.

Petitioners ask extension of time within which to comply with an act of Congress approved March 4, 1907, at a number of stations covered by the thirteen-hour provision and at nearly two-thirds, in the aggregate, of the stations on their lines to which the nine-hour provision relates, alleging in some cases inability to secure the additional force required and in most cases the financial hardship which compliance imposes. *Held:*

1. That to grant such wholesale orders of extension would in effect interfere with the policy of this legislation in its fundamental aspects and amount to an amendment of the law by the official body charged with its administration.
2. That to grant extension on account of financial distress would open the door to endless uncertainties, because there is no possible means of determining the degree of financial distress which would justify extension, and if mere financial hardship is good cause for postponing compliance, it was equally good cause for refusal to pass the law.

REPORT OF THE COMMISSION.

KNAPP, *Chairman:*

The brief time in which these petitions must be passed upon forbids any detailed statement of the facts relating to the several applications or any extended explanation of our views upon the questions presented.

In all 43 petitions are embraced in this report. Of these the earliest was filed on the 7th of February and only 10 were filed prior to February 18. Several were received while the hearings were in progress, during the last three days of the month, which was all the time that could be allowed for that purpose, and three were filed on

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March 2, after the hearings had been closed. The petitions in many cases are quite lengthy and their general allegations of fact are supported by elaborate tables and statistical data. The petitioning companies operate approximately one-half the entire mileage of the country and extensions are asked, according to our estimate, at a still larger percentage of the total number of stations to which the nine-hour provision relates.

The act in question was approved March 4, 1907, and by its terms was to take effect one year after its passage. The first section defines the carriers subject to its provisions and these are practically all railroad companies in the United States. The employees whose hours of labor are limited by the enactment are those actually engaged in or connected with the movement of trains. The second section provides, in its first paragraph, a general limitation of sixteen hours, which applies to all employees of the classes mentioned. The second paragraph reads as follows:

Provided, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: *Provided further*, The Interstate Commerce Commission may after full hearing in a particular case and for good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

The meaning of this latter proviso is the primary question to be determined. The petitioners contend that the authority thereby conferred upon the Commission is broad enough to permit all the extensions for which they have applied and that the reasons they have presented show "good cause" for such extensions. The significance of this claim will appear from certain general facts which may here be considered.

As we understand the matter the stations at which train orders are handled may be divided into three classes, (a) stations at which train dispatchers are located, including "relay offices," so-called, (b) other stations kept open continuously and called "night and day offices," (c) stations closed during all or a greater part of the night and known as "day offices," or closed during all or a greater part of the day and known as "night offices." This classification is not altogether accurate, but will answer the purposes of discussion. The first class of stations does not appear to be much affected by this enact-

ment because, as a matter of fact, the operators at such stations were not ordinarily employed more than eight hours a day when the law was passed and had not been for a considerable time. The law therefore imposed no substantial obligation upon carriers at stations of this description which custom and usage had not already established. The third class of stations, known as day offices, are not understood to be materially affected, as the thirteen-hour limitation is assumed to apply at such stations and there seems to be infrequent occasion to require continuous service of greater duration. While a few petitioners ask extensions at this class of stations, aggregating a comparatively small number, we infer from the facts brought to our attention that observance of the thirteen-hour provision requires little change from usual methods and therefore involves no considerable expense.

It is the second class of stations, the typical night and day office, which is directly and to a most important degree affected by the act in question. At stations of this class two men, and only two, are usually employed. At a very large percentage of such stations, perhaps at most of them, these two men perform all the duties of the roads they represent, including such telegraph service as occasion may require. Each of them must of course be on duty an average of twelve hours out of the twenty-four. The manner in which the business is conducted at such stations has been repeatedly described, and tables of actual experience on many of the petitioning lines show that at few stations are any large number of train orders handled in the course of twenty-four hours, while in numerous instances the time occupied in telegraphic work is a small fraction of the hours of service. It is obvious that the nine-hour law will compel the addition of a third employee at every station of the class in question which is hereafter kept open night and day throughout the twenty-four hours. As respects its practical application, therefore, this is the fundamental feature of the law, for it is the only provision which makes the enactment a matter of serious consequence.

The conditions above outlined were thoroughly understood when this measure was pending before the Congress. The sixteen-hour provision, which applies to all employees connected with the movement of trains, required no substantial change from previous practices, because in most cases and under normal conditions of operation the hours of continuous duty were generally not in excess of sixteen. True, there were frequent instances of longer and clearly excessive hours of service, but the great bulk of the work of men handling trains in the usual course of business was performed within the limits of this provision. The evident object of the limitation was to reach the exceptional cases, where longer hours presumably resulted in

such fatigue as to impair bodily and mental vigor, and thereby introduce a preventable cause of accident. Both the thirteen-hour and the nine-hour provisions practically relate only to telegraphers, as the use of the telephone to transmit train orders is not extensive. And what has just been said respecting the sixteen-hour limitation is believed to be substantially true as to the thirteen-hour provision, which applies to those who handle train orders at stations operated only during the daytime. This provision likewise involves no substantial change from usual and normal conditions of service, for it permits hours of duty equal to those ordinarily required, but was designed to reach and prevent the exceptional instances, comparatively few in number, when longer and unreasonable hours without rest might be expected to result in a loss of alertness and efficiency, and so introduce a preventable cause of accident.

But the nine-hour provision is of an altogether different character. It applies to a very large and well-recognized class of men who handle train orders at night and day stations, and who were known to be customarily required to work at least twelve hours out of the twenty-four. It was intended not merely to cover exceptional cases, where unusual hours might beget disability and danger, but to bring the general and ordinary hours of service at this class of stations from a twelve-hour to about an eight-hour basis. In short, it is a provision to reduce by approximately one-third the hours of duty heretofore required in an extensive field of railway service. Its evident purpose was to promote safety by enforcing practically an eight-hour day for all employees who handle train orders in offices continuously open, whether more or less of their time was occupied with that particular duty.

Bearing this in mind we perceive the real object sought to be accomplished by these petitions. They virtually seek an extension of this law, not in occasional instances of peculiar hardship, constituting an exception to the general class covered by the nine-hour provision, but at the greater part of all the stations comprised in that class. In other words, we are asked in effect to interfere with the policy of this legislation in its fundamental aspects and to impeach its propriety by granting wholesale orders of extension.

That this is not an exaggerated statement is shown by the fact that the relief sought covers a large percentage of the entire number of these night and day stations. As each case was presented the direct question was asked as to the total number of stations of the class in question and the number of those at which an extension was desired. In only one or two instances was the percentage less than 25, while most of the roads asked extensions as to all or nearly all of the stations at which observance of the nine-hour law would require an addi-

tional employee. A computation based on the answers to these specific inquiries shows that the entire number of these stations on all the petitioning roads is about 7,300 and that extensions are urged as to upward of 4,700, or nearly two-thirds of the whole. This means that most of the petitioning carriers claim in substance that every station on their respective lines is a "particular case," and that in the aggregate we are asked to extend the period for compliance at about 66 per cent of the stations to which the provision applies. It seems too plain for serious dispute that no such exercise of authority was ever contemplated. If this nine-hour prohibition ought not to be enforced in the great majority of cases which it clearly covers, whether for reasons which existed when the law was enacted or on account of general conditions which have since arisen, the appeal for relief should be made to the Congress as the sole authority in matters of legislative policy.

With some minor exceptions which will be hereafter noted each petitioner bases its claim for extension upon one or both of two general grounds, inability to procure the additional men required or the financial hardship of providing for their compensation. The first ground is stoutly disputed as a question of fact, and it is practically impossible to determine this question with any great degree of confidence because of the conflicting statements of opposing interests and the manifest inability of the Commission to make a more thorough investigation before the 4th of March. When the first petitions were filed the order assigning them for hearing on the 27th of February required notice of the application to be posted on bulletin boards at division headquarters and also to be given to the president and secretary of the Order of Railroad Telegraphers and the Commercial Telegraphers Union of America, and this order was repeated as each petition was thereafter filed, except those received too late to permit any notice whatever. The president and other officials of the first-named organization attended the hearings and gave evidence, both documentary and oral, more or less persuasive though not altogether convincing, upon this phase of the controversy. As to this point, however, it may be observed that the claim of inability to obtain additional men was pressed at the hearing by only a small number of roads. While most of the petitions as filed set up this ground for relief, the officials who appeared before the Commission, with few exceptions, frankly admitted that conditions had changed materially within a short time and that they now believe the requisite force could be secured. In this connection it is further noted that, while the representatives of one or more roads in a given section of country expressed the opinion that they could procure the necessary number of

telegraphers, the officials of another and competing road in the same territory insisted that sufficient men could not be obtained.

If good cause for extension is shown where actual inability to secure competent employees is established, the Commission must confess to some embarrassment in respect of a few of these petitioners because it has no means of determining at this late date whether adequate effort has been made in this regard to prepare for compliance with the law, or whether under present conditions it is actually practicable to find a sufficient number of reliable men. Upon the conflicting statements respecting this matter, and in the absence of any opportunity to ascertain the actual facts, we can only say that this contention, made by a few roads only, has not been maintained to our satisfaction. It may be that further inquiry would convince us that the fact is as alleged, but the showing made, both as to efforts and probable results, is so uncertain and inconclusive that the doubt in our opinion should be resolved by rejecting this ground of relief. We are somewhat supported in this conclusion by the repeated admission that sufficient men are now available because the volume of traffic has been suddenly and greatly reduced, whereas if prosperous business had continued the additional force could not be obtained; that is to say, if diminished earnings had not furnished the present grounds for extension, the continuance of prosperity would have supplied a different but equally adequate reason.

The other and principal ground upon which we are urged to grant these petitions is the financial hardship which compliance with the law necessarily involves, and particularly just at this time of unexpected and extreme business depression. We are constrained to reject this plea. While it makes a strong appeal to our consideration we are convinced that it should not be recognized as good cause for extension within the meaning of the proviso which defines and limits the scope of our authority. It is unfortunately true that practically all the petitioning roads are suffering severely at this time. Several of them are in sore straits, and in two or three instances actual insolvency has recently been declared. But on what defensible theory can the Commission accept this state of affairs, however unforeseen or distressing, as sanctioning a strained and extraordinary exercise of discretion which would practically defeat for the time being the distinctly expressed mandate of the Congress? Surely the added expense which this law imposes, which its observance makes unavoidable, whether times be good or bad, was never intended to authorize the Commission to postpone the date fixed for it to become effective. There were some roads, including one or more of considerable importance, in the hands of receivers when this law was passed, yet

no exception was made on that account, nor is anything to be found in its provisions which indicates that temporary exemption might be allowed because of financial difficulty. To admit the sufficiency of such a reason is to open the door to endless uncertainty, because there is no possible means of determining the degree of financial stringency which would justify extension. If mere financial hardship is good cause for postponing compliance, it was equally good cause for refusing to pass such a law, because it can in no case be observed without a somewhat burdensome addition to operating expenses.

The proviso in question seems to us neither obscure nor doubtful. The purpose of this legislation was to lessen the hazard of railway operations by making nine hours the maximum of continuous service for employees who handle train orders at these night and day stations. It was well known that thousands of such employees were required to be on duty twelve hours or more in each twenty-four, and it was the plain intention of Congress, in the interest of public safety, to compel a reduction to the number named in the statute. As already stated, the nine-hour provision was not aimed at occasional departures from a general rule, but undertook to correct a customary practice which was deemed too dangerous to be longer permitted. To save it from severity in exceptional instances, where special and peculiar conditions might make observance impracticable or uncommonly difficult, the Commission was authorized "in a particular case" to extend "as to such case" the time allowed to prepare for compliance.

This grant of discretionary power is obviously limited. It was plainly intended to provide for additional time at individual stations where conditions are distinctly unlike those which are common to the class in question. To stretch this narrow authority so as to enlarge the period for compliance at a great majority of the places covered by the nine-hour provision would be in practical effect an amendment of the law by the official body charged with its administration.

That there are cases, and perhaps quite a number of cases, to which the proviso relates and in which good cause for extension might have been shown is fairly indicated by some of the petitions and by statements made at the hearing. But none of these cases has been established to our satisfaction. As the hearing progressed it incidentally appeared, when various applications filed within the last few days were taken up, that there are certain stations which illustrate the exceptions contemplated by the proviso, for example, stations lately built or on sections of road in process of construction, stations in uninhabited localities where there are no proper accommodations for another employee, and possibly others of marked peculiarity. Had

the petitions been directed to these special cases and presented in reasonable time before the law was to take effect, had they been segregated from the stations of familiar type and their anomalous features pointed out with a fair degree of certainty, it is altogether probable that good cause might have been shown for quite a number of extensions. But nothing definite or convincing in this regard was made to appear. Some unusual instances were mentioned, but more with the view, as it seemed, of supporting the general contention than for the purpose of obtaining relief in the particular cases thus brought to our notice. Indeed, it was virtually if not explicitly declared that it would be of little account to secure postponement at a few unimportant stations if additional time could not be allowed at the entire *class* of stations embraced in the applications. We are constrained to hold that the granting of such comprehensive extension would amount to an act of legislation and should therefore be refused, and as good cause for relief has not been shown in particular cases, all the petitions must be denied. An order will be entered accordingly.

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No. 1334.

LANING-HARRIS COAL & GRAIN COMPANY AND
KANSAS CITY HAY COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Submitted February 22, 1908. Decided March 9, 1908.

Certain shippers applied for cars to ship hay, which the carrier, by reason of car shortage, could not furnish at the time and place desired; the carrier informed the shippers that it had certain cattle cars which it could furnish if the shippers would clean and suitably prepare them for the shipments of their hay at their own cost and expense; the shippers accepted these cars upon these terms, cleaned and prepared them, and shipped their hay therein, and then claimed reparation for the cost and expense incurred by them; *Held*, upon the foregoing statement of facts, that the shippers' claim for reparation based on cost of preparing said cattle cars be denied and their complaint be dismissed.

C. W. Durbin for complainants.

E. B. Peirce for defendant.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complainants state that they are engaged in the purchase and shipment of hay and had considerable trouble in getting cars for such shipments by reason of the failure of the defendant to supply same. During the months of December, 1906, and January and February, 1907, defendant informed complainants that it would furnish stock cars for the loading of hay for shipment to Kansas City if complainants would clean the cars, line them with paper, and release the defendant from all liability in case of fire. Complainants being unable to get any other kind of cars to ship their hay, accepted this offer, cleaned the cars, and lined them with paper,

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at a cost of from \$5.05 to \$5.15 per car, paid by them. Complainants charge that, being compelled to pay for furnishing the equipment, they were subjected to unjust and unreasonable transportation charges, in violation of section 1, and subjected to unjust discrimination and undue and unreasonable prejudice and disadvantage, in violation of sections 1, 2, and 3 of the act to regulate commerce; that during the months named the complainant, Lanning-Harris Coal & Grain Company, shipped 39 carloads of hay in stock cars, and that the cost of getting these cars in shape for loading such hay was \$5.05 per car, or \$196.95, as shown in an exhibit; and that the Kansas City Hay Company during this time shipped 24 carloads of hay in stock cars, and that the cost of getting these cars in shape for loading such hay was \$5.15 per car, or \$123.60, as shown in an exhibit. They prayed that after due hearing an order be made commanding the defendant to cease and desist from the aforesaid violation of law to the full extent thereof and to pay to each of the complainants the amounts expended in preparing the cars for loading the hay.

The defendant denied the material charges of the complainants.

At the hearing in Kansas City, January 22, 1908, C. W. Durbin appeared for the complainants, and E. B. Peirce for the defendant.

Mr. Durbin, in making his statement, declared that complainants had a great deal of trouble in getting cars at that time and that the railroad company agreed to furnish stock cars for the loading of this hay, and the company's agent told the complainants that they would be required to clean these cars out and line them with paper and release the company from all liability in case of fire and damage. He then stated: "I will say that at the time these shipments were made the complainants expected that they would have to stand this expense."

Mr. Peirce then said: "That was the agreement."

Mr. Durbin said: "It was kind of an implied agreement, but they understood it."

Mr. Peirce: "The company understood it, too."

The examiner, Mr. Lyon: "That the complainants were to stand the expense?"

Mr. Durbin: "Yes."

Mr. Peirce: "There was an agreement at the time by both the complainants and the defendant that the complainants would stand the expense of cleaning these cars."

Mr. Durbin made no reply.

Mr. Durbin then stated the number of cars so cleaned and the cost to each of the companies.

It was then agreed between Mr. Durbin and Mr. Peirce that the defendant had no tariff on file authorizing or providing for payment

to shippers of charges of this kind, and that these cars were furnished at a time when there was a shortage of equipment, and that they were furnished for the convenience of the complainants at a time when the company was short of cars.

Mr. Durbin then said: "Yes, they were; but at the same time if the complainants were forced, in order to put their hay on the market, to expend \$5.05 and \$5.15 on these cars to get them ready, any man who shipped the hay in box cars had that much advantage over them."

Mr. Peirce replied: "I just ask you if it is agreed that they were furnished at a time when the Frisco was short of equipment."

Mr. Durbin: "I believe they were."

Mr. Peirce: "And they were furnished at the request of your clients and with the implied understanding, at least, that your clients would stand this expense?"

Mr. Durbin replied: "Yes, sir."

Mr. Peirce: "And it was not the purpose of your clients at that time to make any complaint, was it?"

Mr. Durbin: "Well, they thought they ought to have something coming to them."

Mr. Peirce: "At the time they got the cars they were honest, were they not?"

Mr. Durbin: "Yes."

Mr. Peirce: "And they understood they were to have to pay for it?"

Mr. Durbin: "Yes, sir."

Mr. Durbin then stated: "This complaint is not filed for the purpose of getting back any money especially, but they think something is coming to them for this service which they performed."

No testimony whatever was offered as to the value of the labor and material used in preparing these cars for hay shipments except a letter of W. T. Apple, Baxter Springs, Kans., August 21, 1907, to Laning-Harris Coal and Grain Company, in which they stated that they loaded 39 stock cars with hay at Paw Paw that spring, and they figure cost as follows:

Labor, cleaning out stock cars.....	\$1.00
Labor, putting on paper.....	.75
Material, cost of paper.....	3.00
Material, nails.....	.80
Total per car.....	5.05
39 cars, at \$5.05.....	196.95

The case was submitted upon the statements hereinbefore made.

The complainants charged violations of sections 1, 2, and 3 of the act, and then made their statements in regard to the number of cars loaded and the cost of cleaning and preparing them, and ask reparation in the respective amounts so paid. They offered no evidence whatever to show a violation of sections 1, 2, and 3.

Mr. Durbin filed with the Commission a brief in behalf of complainants and quoted this paragraph from the Interstate Commerce Law:

If the owner of property transported under this act, directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or the instrumentalities so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

and claimed that if there was a contract between the shipper and the defendant that the shipper should stand this expense, it is in violation of sections 1, 2, and 3 of the act to regulate commerce and therefore void.

The cars were furnished, 39 at Paw Paw, Ind. T., and there cleaned and prepared, and 24 at Lamar, Mo., and there cleaned and prepared.

In this case application was made for cars suitable for shipping hay. The carrier was unable to furnish such cars by reason of a car shortage, and told the complainants that it could furnish cattle cars which the complainants could use if they would suitably prepare them for the protection of their hay and bear the cost of such preparation. The complainants accepted of this offer upon its terms. The defendant had no tariff authorizing payment for such expenses by the shipper. In one case a claim was made for \$5.05 per car and in the other for \$5.15 per car, but no evidence was offered to show that either of such charges was a reasonable charge as a maximum for the labor and materials so used, or whether the methods used by complainants were the best and cheapest. What the complainants did was in an emergency and of a temporary character and of no value to the cars as cattle cars, and of no value, therefore, to the defendant; the defendant only allowed the complainants to use these cars upon the express provision that they were to pay all the expense in cleaning and papering them for their own convenience.

Our conclusions are that even if what the complainants did in these cases is covered by the paragraph of the law as herein quoted, yet, under the facts and circumstances in this case, the Commission would not be justified in allowing the reparation demanded, and therefore the complaint should be dismissed, and it will be so ordered.

No. 1333.

NORTH BROTHERS, A PARTNERSHIP COMPOSED OF W. H. NORTH
AND M. J. NORTH,

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Submitted February 22, 1908. Decided March 9, 1908.

The defendant carrier for some years had a proportional rate of 15 cents per 100 pounds on hay when carried from Kansas City, Mo., through a part of the state of Kansas, to Cape Girardeau, Mo. This rate was canceled and a higher rate became effective for a short time. Thereafter the 15-cent rate was restored. During the time the higher rate was in effect complainant shipped two carloads of hay over the route named; *Held*, That the rate in excess of 15 cents per 100 pounds on hay in carloads when shipped from Kansas City, Mo., over the route named, to Cape Girardeau, Mo., is unjust and unreasonable, and that complainant is entitled to an order for reparation.

C. W. Durbin for complainant.

E. B. Peirce for defendant.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complainant is a partnership engaged in the buying and selling of hay at Kansas City, Mo.

It appears from the evidence that complainant early in February, 1907, shipped over the rails of the defendant carrier car C. B. U. P. No. 1900 from Kansas City to Cape Girardeau, loaded with 20,700 pounds of hay, on which a rate of 20 cents per 100 pounds was charged, and \$41.40 collected; and that about the same time a like shipment of 20,000 pounds was made in car A. G. S. No. 3730, on which the same rate was charged and \$40 collected. Both of these shipments were of hay originally consigned to complainant from Deerfield, Mo.

For a number of years prior to the time these shipments moved the defendant had in effect between Kansas City and Cape Girardeau, the route passing through a part of the state of Kansas, a proportional rate of 15 cents per 100 pounds, which applied to shipments brought into Kansas City and from there consigned east, and shortly after the shipments in question were made the defendant again

published a proportional rate of 15 cents between the points named. At the time the shipments moved, however, the legal rate was 20 cents per 100 pounds, this rate becoming effective upon the cancellation of the proportional rate of 15 cents. While the 20-cent rate applied from Kansas City to Cape Girardeau the defendant applied the proportional rate of 15 cents from Kansas City to a number of points in the immediate vicinity of Cape Girardeau.

When the attention of the carrier's agent was called to the fact that Cape Girardeau was not given its proportional 15-cent rate, that rate was again made effective to that point.

Our conclusions are that a proportional rate of 15 cents per 100 pounds on interstate shipments between Kansas City and Cape Girardeau on hay in carloads, when such hay originates at points beyond Kansas City, is a just and reasonable rate and should have been applied as a proportional rate on the shipments herein referred to, and is the legal rate which the defendant should charge and collect on future shipments; and that the 20-cent rate charged on interstate shipments was unjust and unreasonable, and that reparation should be made to the complainant in the sum of \$20.35, the amount of the overcharge made and collected on these two shipments, with interest at the rate of 6 per cent from March 1, 1907. An order will be entered accordingly.

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No. 1330.

LANING-HARRIS COAL & GRAIN COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY AND WABASH
RAILROAD COMPANY.

Submitted January 22, 1908. Decided March 9, 1908.

1. Two cars of coal were shipped by complainant from Springfield, Ill., to Kansas City, Mo., via the Wabash Railroad, and, after arrival at Kansas City, one car was forwarded by complainant to Salina, Kans., and one to Kipp, Kans., both going via the Missouri Pacific Railway. The joint rate on coal from Springfield to Salina or Kipp via Kansas City is \$3.73 per ton, whereas the combination rate is \$3.50. On the foregoing shipments defendants charged and collected the higher joint rate. Upon complaint that this charge is unreasonable; *Held*, That these shipments consisted of strictly local shipments into and out of Kansas City, and that the application of the joint through rate was not in accordance with the published tariffs, but that the lawful rate applicable on such shipments was the combination of locals. Reparation awarded.
2. There can be but one legal rate between two points. This rate must be (a) the local rate if over one road, or (b) the joint rate if over a through route composed of two or more roads which have agreed to a joint rate, or (c) a combination of separately established rates applicable on through business over a through route which does not enjoy a joint rate.
3. In general, joint through rates are lower than the sum of the locals between two points, and obviously there can very seldom be any transportation reason why such should not be the case.

C. W. Durbin for complainant.

J. C. Jeffery for Missouri Pacific Railway Company.

N. S. Brown for Wabash Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant, a corporation engaged in the business of buying and selling coal and other commodities in Kansas City, Mo., alleges that the joint rate on coal from Springfield, Ill., to Salina and Kipp, Kans., is higher than the combination of locals from Springfield

into Kansas City (which is \$1.80), and the local rate from Kansas City to Salina or Kipp (which is \$1.70); that the application of the joint rate in preference to the combination of the locals is unjust and unreasonable and to the prejudice and disadvantage of complainant, and violates sections 1, 2, and 3 of the act; that on or about December 24, 1906, Wabash car numbered 45876, was received at Kansas City, Mo., over the Wabash Railroad; that this car was diverted to Salina, Kans., via the Missouri Pacific Railroad; that freight charges of \$162.45 were collected at Salina on this car; that the freight charges should have been \$151.37, an excess charge of \$11.08 having been collected, for which amount reparation is claimed; that on or about December 25, 1906, Wabash car numbered 31890 was received at Kansas City, Mo., over the same railroad, and that this car was diverted to Kipp, Kans., via the Missouri Pacific, and that freight charges amounting to \$122.33 were collected at Kipp on this car; that the freight charges should have been \$113.75, an excess of \$8.58 having been collected, for which amount reparation is claimed.

The prayer is that the defendants be ordered to cease and desist from the alleged violations of law, and that reparation be awarded in the sum of \$19.66.

The answer of the Missouri Pacific admits that there is in effect from Springfield, Ill., to Kansas City, Mo., a rate of \$1.80 per ton on coal when shipped in carload lots over the lines of the Wabash; that during December, 1906, there was in effect a rate of \$1.70 on the same commodity from Kansas City to Salina and Kipp, Kans., over the Missouri Pacific line, and that by this combination a through rate of \$3.50 may be obtained from Springfield to Salina and Kipp, but that the through rate is higher than the joint rate over the same route from Springfield to Salina and Kipp, which is to both points \$3.72 per ton.

The Missouri Pacific denies that the application of the through rate is unjust and unreasonable, and admits that the defendant's line carried the car mentioned in the complaint from Kansas City to Salina and the car to Kipp on the dates named, and that defendant applied thereon the joint rate.

One of the witnesses for complainant testified that he had been engaged in the general business of buying and selling coal in Kansas City for a period exceeding twenty years, and during all of that time it had been the practice to buy coal in Illinois, as well as in other states, have the same billed to Kansas City, and either during the transit of the car to Kansas City or within a few days after its arrival there to give directions to the carrier to divert or reconsign the shipment to some other point; that in case the sum of the locals

through Kansas City was less than the through rate to final destination that that rate had always been charged and collected; that if the complainant ascertained that the through rate was less than the combination of locals, it would order the car direct from the mines to final destination, thus applying the through rate, the lower rate inuring to the benefit of the final consignee, and complainant always based its price on the lower rate.

In the case of the two shipments involved in this proceeding, the cars were shipped from Springfield, Ill., to Kansas City, billed to the Laning-Harris Coal and Grain Company, at Kansas City, and then one car was forwarded to Salina, and one to Kipp. The manager of the Laning-Harris Company testified that he could not state definitely whether these particular cars of coal were actually sold prior to the time they left Illinois or not, owing to the fact that he did a large business, and sometimes coal was actually sold to the consignee at final destination prior to the ordering of the same from the mines, and in many other cases coal was purchased and ordered shipped to complainant at Kansas City before sale. He testified, however, that he considered and intended these to be strictly local shipments into Kansas City and local shipments out of Kansas City to the two points named, and that the complainant had quoted the price of coal on that basis, and that the difference between the joint rate actually collected and the sums of the locals was paid by the complainant, that amount being deducted by the final consignees from the bills rendered by complainant.

The two cars here involved were not consigned to Salina and Kipp until they reached Kansas City, at which time the Wabash Company was ordered, both by telephone and in writing, to rebill the coal to the points named. They were not technically reconsigned as there was no reconsignment rule in the tariffs of defendant on this traffic at Kansas City at the time of this movement. The freight charges were paid at destination. The only expense bills issued were those offered in evidence, none being issued at Kansas City.

The questions raised by the pleadings in this case are: *First.* If the shipments referred to were made from Springfield, Ill., through Kansas City, to the points of final destination, with the intent that they should be through shipments, whether the through published rate should apply or a rate equal to the sum of the locals into and out of Kansas City, should that combination be less than the through rate. *Second.* Whether the shipments were actually local into Kansas City and local from thence to final destinations.

From the facts, it is clear that the complainant intended these as strictly local shipments, and no evidence was offered by defendant to controvert this contention. It is true that complainant was unable to

say positively whether or not these particular cars of coal had been sold by it prior to the time they reached Kansas City, but it is a fact that no orders were given to the defendant to carry the coal to any other points until after it had actually reached Kansas City. It is also true that this method of doing business is very customary. A dealer in coal, as in this case, locates at some central point of distribution, and to that point he consigns in the first instance most of his coal. Some of it is actually consumed at such point, as in the case of Kansas City, and some of it is sold at other points, and it is generally difficult for the dealer to determine definitely which particular car of coal is sold prior to its receipt at the central point of distribution. Under such circumstances and conditions, when the coal is actually shipped into such central point of distribution and delivery is there made, it must be regarded as a local shipment.

The Commission is therefore of the opinion that the rate of \$3.72 charged on these 2 cars of coal is not in accordance with the published tariffs and that the lawful rates applicable on said shipments were \$1.80 per ton from Springfield, Ill., to Kansas City, Mo., and \$1.70 per ton from Kansas City to Salina and Kipp, Kans., and that the complainant is entitled to reparation in the sum of \$19.66, that being the difference between the amount actually charged and collected from complainant and the lawful charge for the services rendered.

This ruling is made on the facts herein involved, which differ but slightly from those presented in the *Texarkana case*, *Gulf, Colorado & Santa Fe Railway Co. v. Texas*, 204 U. S., 403. The billing of both shipments here concerned was to Kansas City, and no order to send them forward to other points was received until they had reached Kansas City. They might have been held there, the cars unloaded, and the coal sold at Kansas City. The shipment out of Kansas City must be regarded as a separate movement, on which the local rate is to apply, unless we can find evidence which warrants the holding that the destination of these shipments when they moved out of Springfield was other than Kansas City, but this we can not find. All the evidence is to the contrary, and the absence of reconsignment privileges at Kansas City as to this traffic makes it the clearer that the railroad itself could not properly have regarded the movement as through from Springfield to Salina, for to ship to Kansas City and then to allow a reconsignment on a through rate to Salina would be to extend a privilege which the tariffs did not grant.

This case would never have been presented to the Commission had the joint through rate between Springfield and Salina been no higher than the sum of the two locals, and it is difficult to conceive of those circumstances which justify the disparity in these rates. In general

joint through rates are lower than the sum of the locals between two points, and obviously there can very seldom be any transportation reason why such should not be the case. Why then are these locals so adjusted that the dealer in Kansas City may ship coal to that city and distribute it to Salina at a lower transportation charge than is imposed on the Salina merchant who buys in Springfield and ships directly to himself at Salina? The reason which superficially appears is that it is the policy of the carriers to make Kansas City the coal distributing center for points farther west—a policy which does not appear to have any transportation justification.

The Commission has held that there can be but one legal rate between two points—a very simple enunciation of a fundamental principle. This rate must be either (a) the local rate if over one road, or (b) the joint rate if over a through route composed of two or more roads which have agreed as to a joint rate, or (c) a combination of separately established rates applicable on through business over a through route which does not enjoy a joint rate. (Section 6.)

A shipment billed from Springfield to Salina may therefore be taxed none other than the joint rate between these points. It is unlawful to apply the sum of the locals to such shipment, even though they make lower than the joint rate. And this principle would be applied in this case were it not that in fact it appears the shipment was billed originally from Springfield to Kansas City, from which point it was again billed to Salina (or to Kidd as the case may be)—thus moving as two local shipments instead of one through shipment.

If complaint had been made that the joint rate from Springfield to Salina was excessive, at least to the amount of the excess over the sum of the locals, it would be within our power to order such reduction; but no such allegation has been made, and so long as the present adjustment of the relation between locals and joint rates as is herein presented continues it is quite manifest that the Kansas City dealer will not complain.

It is a conservative statement that thousands of letters have been received by the Commission complaining that carriers insist upon applying a higher through joint rate than could be made by application of the locals, and that it is unjust to compel the shipper to pay the higher rate. This body of criticism the Commission has felt was incident to the present transitional stage in which the carriers were adapting themselves to a more rigid application of the principles of the act to regulate commerce than had hitherto obtained. It is not the purpose of the Commission, however, to permit carriers to evade the intent of the Commission's rulings—as to there being but one legal rate between two points—by maintaining through rates which are

greater than the combined locals, excepting under exceptional circumstances, of which the present case is not an illustration.

In December, 1906, the Commission adopted and issued to all railroads the following ruling:

43. *Reduction of joint rate to equal sum of locals* (effective December 21, 1906).—Where a joint rate is in effect by a given route, which is higher between any points than the sum of the locals between the same points, by the same or another route, and such joint rate has been in effect thirty days or longer, such higher joint rate may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission.

* * * * *

Many informal complaints are received in connection with regularly established through rates which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate except after full hearing upon formal complaint. It is believed to be proper for the Commission to say that, if called upon to formally pass upon a case of this nature, it would be its policy to consider the through rate, which is higher than the sum of the locals between the same points as prima facie unreasonable, and that the burden of proof would be upon the carrier to defend such higher through rate.

It was the expectation of the Commission in making this ruling that the railroads would of their own motion, and to save charges of discrimination, install new tariffs reducing the through rates in question. In many instances the railroads have in good faith proceeded to "line up" their rates with this end in view. But this has not been so universal as the necessity therefor required. Instead of making such reductions the railroads in far too many instances have availed themselves of this Commission's ruling—that there could be but one legal rate between two points—to charge the higher joint through rate, and thus increase their revenues without openly, by traffic provisions, increasing such rates. They have, in short, used the Commission's proper and necessary ruling to the disadvantage of shippers and contrary to the intent and purpose of the rule itself.

An order will be entered in accordance with these views.

13 I. C. C. Rep.

No. 1034.

WAGNER, ZAGELMEYER & COMPANY

v.

DETROIT & MACKINAC RAILWAY COMPANY AND MICHIGAN CENTRAL RAILROAD COMPANY.

Submitted January 17, 1908. Decided March 10, 1908.

Complaint alleges that since July 13, 1906, the Detroit & Mackinac Railway Company has discriminated against complainants in furnishing cars for interstate shipments of ice from Tobico, Mich., and that rates charged by defendants on ice from Tobico to points in Ohio are unreasonable; *Held*, under the circumstances disclosed by the record, that complainants were not unduly prejudiced in their car supply, and that the joint rates on ice from Tobico to points in Ohio are not shown to be unreasonable *per se* or relatively. Complaint dismissed.

Claude E. Devitt and Gillette & Clark for complainants.

James McNamara and Frank C. Cook for Detroit & Mackinac Railway Company.

O. E. Butterfield for Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainants allege that since July 13, 1906, the Detroit & Mackinac Railway Company has discriminated against them in furnishing cars for interstate shipments of ice from Tobico, a billing point on said railway in the state of Michigan, in violation of section 3 of the act to regulate commerce; they also allege that the rates charged by defendants for the transportation of ice from Tobico to points in the state of Ohio are unreasonable and unjust, in violation of section 1 of said act, and ask reparation for the injury they claim to have suffered in the premises. The facts necessary to be considered are found as follows:

March 3, 1906, complainants, The Wagner Lake Ice & Coal Company, Alexander Zagelmeyer and John G. Frank, formed a partnership and began the business of harvesting, storing, and selling ice

under the firm name of Wagner, Zagelmeyer & Company, with headquarters at Sandusky, Ohio, where the office of the Wagner Lake Ice & Coal Company is located. During that month the firm erected an ice house on the shore of a little bay of Lake Huron, called Tobico, about 7 miles north of Bay City, Mich., along the line of the Detroit & Mackinac Railway. The ice house was given the name of the bay on which it is situated, as a billing point, and is the only industry in that vicinity.

Defendants are common carriers of interstate traffic, and the Detroit & Mackinac Railway Company furnishes the only transportation facilities available to complainants as shippers of ice from Tobico. The railway line of this company extends from Bay City on the south, where it connects with the Michigan Central, Pere Marquette and Grand Trunk Railroads, to Cheboygan, Mich., on the north, a distance of 195 miles. The road was originally much shorter, without connections at either end, and was constructed by a lumber company for the purpose of marketing lumber and forest products. After a large part of the timber growing along its line had been cut and sold, and on November 1, 1893, the road passed into the hands of a receiver. February 1, 1895, it was purchased by the Detroit & Mackinac Railway Company, and extensions were made to Bay City and Cheboygan. A large part of the road runs through a thinly settled and not very fertile section of the state of Michigan.

Complainants stored about 10,000 tons of ice at Tobico, which was to be sold by The Wagner Lake Ice & Coal Company at Sandusky, under an arrangement for a division of profits amongst the members of the firm. The selling company is a large concern, owning six ice houses at Sandusky and owning or controlling a number of others located at various points in Ohio and Michigan. It was the custom of the company when orders for ice were received at its office in Sandusky to parcel them out to various ice houses owned or controlled by it, as might be most convenient for shipment. The complaining firm employed one of its members who resided in North Bay City to manage the business at Tobico, receive orders for shipments of ice, superintend the loading into cars, and bill shipments to their respective destinations. Orders were usually telephoned from Sandusky either in the morning for that day's shipments or in the evening for shipment the next day. The manager at Tobico had no authority to make sales or shipments of ice except upon receipt of orders from Sandusky.

Prior to the organization of the complaining firm officials of the Detroit & Mackinac Company were consulted, and they agreed to construct a switch track from the main line of the road to the ice house in question, and to care for the traffic offered by complainants.

A switch track 690 feet in length was accordingly laid from the main track to the ice house by the railway company and service of cars therefor made by switch engines from Bay City.

The first shipments of ice were made July 13, 1906. It is admitted that sufficient cars were furnished up to and including September 17, 1906. It appears that prior to that date more cars were offered, and could have been furnished, than were necessary to accommodate complainants' orders from Sandusky. Between September 17 and October 3, 1906, but few cars were furnished, and after the last named date no cars at all were furnished, although daily requests were made therefor. During the months of October and November, and until the middle of December, 1906, there was a strong demand for ice, the harvested crop throughout the country being short.

At Tawas, a point 54 miles north of Tobico on the line of the Detroit & Mackinac Railway, which road furnishes the only transportation facilities thereat, are located ice houses owned by three other concerns, and also two ice houses owned by the Detroit & Mackinac Railway Company. The ice stored by the railway company is used in car refrigeration and for other railway purposes, and the surplus at the end of the season is disposed of in Bay City. The storing capacities of the ice houses owned by these three companies in Tawas are, respectively, 7,000, 2,500, and 1,500 tons. The complainants shipped 176 cars of ice from July 13 to October 3, 1906, inclusive, and there were shipped by the three companies from Tawas, beginning June 12 and continuing during the year 1906, 268 cars.

The total freight equipment of the Detroit & Mackinac Company during the year 1906 does not appear. About 82 per cent of the traffic passing over the road that year consisted of lumber, forest products, coal, stone, sand, etc., and a large part of the equipment was made up of flat and gondola cars suitable for transporting freight of that character. The total number of box cars owned by the company was 545, and of this number it appears that during the year 1906, after June 1, an average of 269 cars were off the company's line, and that it was unable to secure their return by connections. The company also owned eight refrigerator cars which were constantly in use for purposes of local shipments of perishable freight.

When shipments of ice began from Tobico the officials of the Detroit & Mackinac Company were informed that The Wagner Lake, Ice & Coal Company had made arrangements with the Michigan Central Railroad Company to furnish cars sufficient to transport the traffic that complainants might have for shipment. It seems to have been understood that shipments from Tobico would be made over the Michigan Central line from Bay City. That road for a

time did furnish cars in sufficient numbers to meet complainants' demands, but late in September the supply began to fall off, and by October 1, 1906, no cars were received for this traffic by the Detroit & Mackinac from the Michigan Central. Later in October the Michigan Central informed the Detroit & Mackinac Company that it would be unable to furnish more cars for the reason that it did not have enough for the traffic offered on its own line.

Prior to September 15, 1906, complainants were frequently urged by officials of the Detroit & Mackinac Company to increase their shipments of ice if they wished to dispose of what they had stored. They were informed a number of times that a car shortage was impending, but the local manager of the firm was unable to, or at least did not, secure orders for increased shipments.

A shortage of cars for transporting all kinds of freight began about September 15, 1906, which seriously affected most of the lines in the United States, and from October 1 until after the close of 1906 a freight car famine prevailed to a greater extent than was perhaps ever before known. After September 15, 1906, the Detroit & Mackinac Company made repeated efforts to secure freight cars from its connections for the use of complainants and other shippers along its line of road, but without success. Its own available cars were constantly in use for local traffic, and at times it was compelled to use its baggage cars on passenger trains for ordinary freight shipments between points on its own line. Cars sent out of the state of Michigan were not returned, and after October 1, 1906, so far as the record shows, it did not receive a single car from its connections.

It appears that there were shipped from Tawas by the three ice companies 30 cars in October, 10 cars in November, and 3 cars in December, 1906; that only 2 of these cars were shipped to points outside the State of Michigan; and that most of the whole number had been shipped into Tawas and unloaded there.

November 8, 1906, complainants sold their ice house, reserving the ice remaining therein until January 1, 1907. The amount of ice in the house at that date does not definitely appear, estimates of witnesses varying from 1,000 to 3,000 tons. About 1,000 tons of ice in the largest house at Tawas were not sold during the year 1906.

Shipments of ice from Tobico for the most part were made to Toledo and Cleveland. No shipments by complainants were made to Bay City or other points on the Detroit & Mackinac road, and no orders for such shipments were received. The rate on ice from Bay City to Toledo over the Grand Trunk and Michigan Central is 80 cents per ton in carloads and \$1.10 per ton from Bay City to Cleveland. The distance, via short line, from Bay City to Toledo is 148 miles, and to Cleveland, 261 miles. The joint freight tariff on ice

shipments issued by the Detroit & Mackinac Company September 10, 1906, names a rate of \$1.10 per ton from Tobico and Tawas to Toledo and \$1.50 per ton to Cleveland. This rate was in fact effective for the year 1906 prior to the issuance of the tariff. Shipments from Tobico and Tawas to Toledo are carried from Bay City by the Michigan Central, Pere Marquette, or Grand Trunk lines, and shipments to Cleveland are participated in by a third carrier. On shipments to Toledo the Detroit & Mackinac Company's proportion of the joint rate is about 50 cents a ton, and its proportion on shipments to Cleveland is about 37 cents.

An ice house owned by the Union Ice Company is located about 3 miles nearer Bay City than Tobico, and shipments from that company's plant take a switching charge in addition to the rate of \$5 per car, where shipments are made from Bay City over any other line than the Grand Trunk, which serves the Union Ice Company. The ice houses at Tawas lie alongside the main track of the Detroit & Mackinac Railway, and the car service in and out is handled by local freight crews.

Section 3 of the act prohibits the making or giving of any undue or unreasonable preference or advantage to any shipper or any description of traffic, or subjecting any shipper or traffic to any undue or unreasonable prejudice or disadvantage. Under the law every shipper is entitled to fair and equal treatment in the use of cars and other facilities of shipment. Therefore the first question presented by this record is whether complainants were unjustly discriminated against or otherwise unduly prejudiced by the Detroit & Mackinac Company in the furnishing of cars for ice shipments during the year 1906.

It was after September 15, 1906, that complainants experienced difficulty in securing sufficient cars to supply orders for ice received at Tobico from Sandusky. The evidence clearly establishes and complainants admit that prior to that time the service was satisfactory. More cars could have been furnished than were used by complainants, but the system under which their business was conducted prevented increased shipments. From about September 15, 1906, and continuing until after January 1, 1907, a car shortage, amounting to a famine of freight transportation facilities throughout the country after October 1, 1906, existed. This car shortage, which prevailed on the Detroit & Mackinac in common with all other railroads, was brought about by circumstances over which that company had no control and for which it was not responsible. So far as appears, the freight equipment of the Detroit & Mackinac road during the year 1906 was adequate for all ordinary and usual traffic demands along its line, and it had made such arrangements with its connections for

supplying it with cars when needed as would justify the reasonable expectation that all shipments offered would be promptly transported to destination. The Detroit & Mackinac Company made every effort possible to supply complainants with cars ordered and demanded after October 1, 1906, but could not get them from connections and had not sufficient of its own to take care of the local traffic offered along its line. The number of cars furnished to shippers at Tawas after October 1, 1906, were supplied from those unloaded at Tawas and reloaded with ice destined to Michigan points. The number of cars furnished complainants up to October 3, 1906, compared with those furnished shippers of ice at Tawas, is convincing that the former were not discriminated against on the whole season's business. When the road could have supplied more cars complainants could not use them, and demands for cars were made during a period when the evidence shows it was impossible for the road to comply therewith. Under these circumstances we are unable to find from the evidence that complainants were unduly prejudiced or unduly discriminated against by the Detroit & Mackinac Company in furnishing cars for transportation of ice from Tobico during the year 1906.

There is no evidence that the joint rates on ice from Tobico to Toledo and Cleveland are unreasonable *per se*. Complainants rely wholly upon the fact that Tobico is 54 miles nearer Toledo and Cleveland than Tawas, which takes the same rate, and upon the fact that the rate from the Union Ice Company's plant to Toledo via the Grand Trunk Railroad is but 80 cents per ton in carloads, to establish their claim that the rates in question are excessive or otherwise unlawful. The rate of 80 cents per ton from Bay City to Toledo is not peculiar to the Grand Trunk Railroad, but is the rate charged by the Michigan Central and Pere Marquette. To this rate of 80 cents on shipments from the Union Ice Company's plant is to be added a switching charge of \$5 per car, if the shipment from Bay City is via any other line than the Grand Trunk. If the Grand Trunk carries the shipment to Toledo, which it can do over its own line, the switching charge is absorbed by it. No switching charge is made for service at Tobico, which is 7 miles from the nearest railroad station on the Detroit & Mackinac Railway, and 3 miles farther from Bay City than the Union Ice Company plant. Under these circumstances the lower charge by the Grand Trunk made to the Union Ice Company for shipments to Toledo does not of itself establish that the joint rate of \$1.10 from Tobico to Toledo via the Detroit & Mackinac and the Michigan Central is unreasonable or unjust. Complainants furnished no evidence that shipments for the Union Ice Company were made under substantially similar circumstances and

conditions as those from Tobico, and there is nothing in the record upon that point other than the facts above mentioned. The advantage that Tobico may have in being located 54 miles nearer Toledo and Cleveland than Tawas seems to be substantially overcome by the fact that cars for the former must be switched in and out a distance of 7 miles and partly over a track laid and operated solely for that purpose. The Tawas ice houses are located adjacent to a community of some little importance, while the only industry at Tobico is complainants' ice business. Under the facts and circumstances shown, we are unable to find that the joint through rates from Tobico to Toledo and Cleveland on shipments of ice are excessive or otherwise unlawful.

It follows that the claims for reparation have not been sustained and the complaint must therefore be dismissed.

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No. 1048.

HOLLIS STEDMAN AND STORIE BURT STEDMAN, DOING
BUSINESS UNDER THE FIRM NAME OF HOLLIS STEDMAN & SONS,

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY; ST.
LOUIS & SAN FRANCISCO RAILROAD COMPANY, AND
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted February 17, 1908. Decided March 9, 1908.

1. In February, 1904, complainants shipped three carloads of potatoes from Wautoma, Wis., to Springfield, Mo., over the following route designated by them: From Wautoma to Chicago via Chicago & Northwestern, thence via Illinois Central to East St. Louis, and thence via St. Louis & San Francisco to Springfield, and paid the combination of locals rate of 38½ cents per 100 pounds. Complainants insist that this rate is unreasonable, because the shipments might have been made from Wautoma to Springfield over other lines for 25 cents per 100 pounds; *Held*, That the higher charge was due solely to complainants' error; that the Commission has no jurisdiction to establish a joint through rate, since a satisfactory one already exists, and that the rate charged is not found to be unreasonable in itself.
2. If these shipments had been routed via St. Louis instead of East St. Louis the rate would have been 1½ cents less per 100 pounds. Apparently the Illinois Central was at fault in billing the shipments to East St. Louis instead of St. Louis, and should make good this overcharge.

Burke, Alexander & Burke for complainants.

F. D. Fulton and *S. A. Lynde* for Chicago & Northwestern Railway Company and Illinois Central Railroad Company.

T. O. Jennings and *E. B. Peirce* for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainants in February, 1904, shipped three carloads of potatoes, aggregating 108,000 pounds, from Wautoma, Wis., to Springfield, Mo., upon which they paid a total freight charge of \$415.80, or 38½ cents per 100 pounds. They insist that the rate should have been 25 cents per 100 pounds and ask to be awarded, by 13 I. C. C. Rep.

way of reparation, the difference between what the freight would have been at this rate and the amount which they actually paid, or \$145.80.

The shipments moved via the Chicago & Northwestern Railway to Chicago, from Chicago to East St. Louis via the Illinois Central Railroad, and from East St. Louis to Springfield via the St. Louis & San Francisco Railroad. No joint rate was in effect over this route at the time the shipments moved, and the rate collected was the regularly established locals applicable to the movement of such shipments between the points named.

The complainants insist that the rate thus arrived at and exacted was unjust and unreasonable, for the reason that the shipments might have been made from Wautoma to Springfield over other lines no longer than this for 25 cents per 100 pounds.

There were at the time these shipments moved, and had been for some time previous, several through routes over which a joint rate of 25 cents applied from Wautoma to Springfield. In all cases the Chicago & Northwestern Railway was the originating and the St. Louis & San Francisco the delivering carrier, and the joint rate applied in every instance through Kansas City and in no case through St. Louis; but the joint rate applied over a considerable number of intermediate railroads and through several different junction points with the Northwestern. For example, the shipment might have moved to Chicago, as it did in this case, and from Chicago over any Kansas City line to Kansas City, or it might have moved from Wautoma through Marshalltown, Iowa, or Des Moines, Iowa, or Omaha, Nebr. The complainants were well aware of the existence of these routes and had made repeated shipments upon this 25-cent rate, but, for some reason, not disclosed, the three carloads in question were expressly routed, in writing, by the agent of the complainants, over the line by which they went.

The law requires carriers to publish their rates, and in every case to collect and retain the published rate. These defendants had no option, therefore, but to collect the charges which they did.

It has been seen that these potatoes might have been shipped to Springfield at a rate of 25 cents if the proper route had been selected. If the complainants had delivered this traffic to the Chicago & Northwestern Company at Wautoma without any routing instructions, it would have been the duty of that company to have sent them over some route by which the 25-cent rate applied, and if, instead, it had sent them by a more expensive route that company would have been liable to the complainants for its negligence in damages, which damages, in the present case, would have been the difference between the rate actually paid and the 25-cent rate. In fact, the complainants

directed the Northwestern Company by what route to send this traffic, and that company certainly might regard those instructions without legal liability for so doing.

The distance over which this traffic actually moved was 734 miles, while the distance via Chicago and Kansas City would have been 863 miles; and the complainants insist that if 25 cents is a reasonable rate from Wautoma to Springfield by the several lines over which the traffic might have moved for that charge, 38½ cents must be held to be an excessive rate.

It may be that the short-line distance by some of the different junctions between Wautoma and Springfield is less in miles than the distance over which this traffic moved and that the application of the 25-cent rate via Chicago is the result of this competitive situation. Without inquiring as to this, it should be noted that the rate collected was made up of a joint rate over the Chicago & Northwestern and the Illinois Central from Wautoma to East St. Louis of 20 cents and a local rate from East St. Louis to Springfield of 18½ cents. The distance from Wautoma to Chicago is 203 miles and from Chicago to St. Louis via the short line 286 miles, a total of 489 miles. We are not prepared to hold that a rate of 20 cents for the transportation of potatoes this distance in carloads is excessive. The 18½-cent rate from East St. Louis to Springfield is made by adding to the rate from St. Louis, which is 17 cents, the bridge toll of 1½ cents. The 17-cent rate from St. Louis is a state rate established by the commission of Missouri, and we are not prepared to hold that this is excessive as applied to the local service.

If we were asked to establish a through route over these lines and a joint rate for that route, we might well fix one less than that charged in this case; but we could not here declare a through route for the reason that this Commission is only given authority to establish such a route where no satisfactory through route is already in existence, *Enterprise Transp. Co. v. Pennsylvania R. R. Co.*, 12 I. C. C. Rep., 326, and in this case there are already in operation three or four satisfactory routes between these points of which the complainants have repeatedly availed themselves in the past and to which no objection is made.

When the complainants learned that the shipments had taken this more expensive route, they wired the Illinois Central and the St. Louis & San Francisco asking that the rate of 25 cents be "protected." The defendants were willing to do this; that is to say, to apply by this route the same rate which might have been obtained by the complainants over some other route, provided they had the legal right to do so, but their attorneys advised to the contrary; and this was plainly correct. The statute is mandatory in requiring carriers to collect their published tariffs, and this Commission has no

authority to vary that requirement. We are forced to conclude, therefore, that the higher charge was due solely to the error of the complainants and that these defendants were not at fault in that respect. We have no jurisdiction to establish a joint through rate, since a satisfactory one already exists, and we can not break down all these local rates for the purpose of giving the complainants what would be equivalent to a through rate in this one instance.

The rate from Wautoma to St. Louis and East St. Louis was the same; the rate from East St. Louis to Springfield, Mo., was $1\frac{1}{2}$ cents higher than from St. Louis owing to the bridge toll. If these shipments had been routed via St. Louis instead of East St. Louis the rate would have been 37 cents instead of $38\frac{1}{2}$ cents. There is therefore an overcharge of $1\frac{1}{2}$ cents per 100 pounds, amounting to \$16.20, as the defendants concede. Apparently, the Illinois Central was at fault in billing the shipments to East St. Louis instead of St. Louis and should make good this overcharge. An order will therefore issue against that company for the payment of this sum.

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No. 1300.

F. J. GENTRY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
GULF, COLORADO & SANTA FE RAILWAY COMPANY;
TEXAS SOUTHERN RAILWAY COMPANY, AND L. C.
TAYLOR, RECEIVER THEREOF; TEXAS & PACIFIC
RAILWAY COMPANY, AND MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY.

Submitted February 17, 1908. Decided March 9, 1908.

On complaint of failure of defendants to establish a through route and joint rate on lumber, lath, and shingles from Ashland, Tex., to Nash, Okla., it appeared that there formerly existed joint rates over two established routes between these points, but that they have been recently canceled; *Held*, That there is at the present time no satisfactory through route or joint rate for the shipment of such commodities between said points, and that a joint through rate of 28½ cents per 100 pounds should be established over a through route specified herein.

F. G. Walling for complainant.

A. A. Hurd, Robert Dunlap, and James L. Coleman for Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company.

T. J. Freeman for Texas & Pacific Railway Company.

James Hagerman and J. M. Bryson for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant is interested in the shipment of lumber from Ashland, Tex., to Nash, Okla., and asks that a joint rate be established

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over the lines of the defendants between those points. The Gulf Colorado & Santa Fe Railway Company was not made a party to the original complaint, nor was it present when the first hearing was had. It has since then been cited in as a defendant to this proceeding and fully heard in the premises.

There are two possible routes between Ashland and Nash:

First. From Ashland to Winsboro over the Texas Southern; from Winsboro to Oklahoma City over the Missouri, Kansas & Texas; and from Oklahoma City to Nash via the Atchison, Topeka & Santa Fe.

Second. From Ashland to Marshall via the Texas Southern; from Marshall to Fort Worth via the Texas & Pacific; from Fort Worth to Purcell via the Gulf, Colorado & Santa Fe, and from Purcell to Nash via the Atchison, Topeka & Santa Fe.

Originally the transportation from Guthrie to Nash was over the Denver, Enid & Gulf, but that road was, in July, 1907, incorporated into the Atchison, Topeka & Santa Fe, of which it is now a part.

There formerly existed a joint through rate of $28\frac{1}{2}$ cents upon lumber, lath, and shingles from Ashland to Nash by the first of the routes above indicated, except that the transportation under this joint tariff was via the Missouri, Kansas & Texas to Guthrie and from Guthrie over the Denver, Enid & Gulf. This joint rate was canceled in April, 1907.

There was also in effect a joint rate of $28\frac{1}{2}$ cents upon the same commodities via the second route above indicated. This rate was canceled October 1, 1907, by the Texas & Pacific for the reason that the Gulf, Colorado & Santa Fe had notified that company that after October 1 it would insist upon a larger division of the through rate than it had hitherto obtained.

We find that there is at the present time no satisfactory through route or joint rate for the shipment of lumber, lath, and shingles from Ashland to Nash. We are of the opinion that such a route should be established from Ashland to Marshall over the Texas Southern; from Marshall to Fort Worth over the Texas & Pacific; from Fort Worth to Purcell over the Gulf, Colorado & Santa Fe; and from Purcell to Nash over the Atchison, Topeka & Santa Fe; and that $28\frac{1}{2}$ cents is a reasonable joint rate for the transportation of those commodities as above. Such through route and joint rate will accordingly be directed.

The reason for withdrawing the former rate seems to have been some dispute over the matter of divisions, but this subject was not gone into upon the hearing. If the carriers fail to agree, we will hear them upon that point and make some further order as to that matter, according to the provisions of the statute.

No. 1204.

PECOS MERCANTILE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY;
COLORADO & SOUTHERN RAILWAY COMPANY; DENVER
& RIO GRANDE RAILROAD COMPANY; KANSAS CITY
SOUTHERN RAILWAY COMPANY; MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY; MISSOURI PACIFIC RAIL-
WAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTH-
ERN RAILWAY COMPANY; KANSAS CITY NORTHWEST-
ERN RAILROAD COMPANY; PECOS VALLEY & NORTH-
EASTERN RAILWAY COMPANY; ST. LOUIS & SAN FRAN-
CISCO RAILROAD COMPANY; ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS
RAILROAD COMPANY; CHICAGO, ROCK ISLAND & GULF
RAILWAY COMPANY; EL PASO & SOUTHWESTERN RAIL-
ROAD COMPANY; FORT WORTH & DENVER CITY RAIL-
WAY COMPANY; FORT WORTH & RIO GRANDE RAILWAY
COMPANY; GULF, COLORADO & SANTA FE RAILWAY
COMPANY; HOUSTON & TEXAS CENTRAL RAILROAD
COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY
COMPANY OF TEXAS; ST. LOUIS, KANSAS CITY &
COLORADO RAILROAD COMPANY; ST. LOUIS, SAN
FRANCISCO & TEXAS RAILWAY COMPANY; ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY OF TEXAS;
GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY
COMPANY, AND TEXAS & PACIFIC RAILWAY COMPANY.

Submitted February 29, 1908. Decided March 10, 1908.

Under the circumstances and conditions shown to exist in this case the Commission is unable to find that the class rates now in effect for transportation of property from Chicago, St. Louis, Omaha, and Denver to El Paso, Tex., unduly prejudice Pecos, Tex., or that the lower rates from such points of origin to El Paso constitute a violation of the fourth section of the act as that section is construed by the courts. Complaint dismissed.

T. J. Hefner for complainant.

S. H. Madden for Atchison, Topeka & Santa Fe Railway Company, Pecos Valley & Northeastern Railway Company, and Gulf, Colorado & Santa Fe Railway Company.

H. F. Lambert for Colorado & Southern Railway Company.

E. L. Sargent for Texas & Pacific Railway Company.

J. C. McCabe for Chicago Rock Island & Gulf Railway Company.

D. L. Meyers for Pecos Valley Lines.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

It is alleged in this complaint that rates charged by defendants for transportation of commodities from Chicago, Ill., St. Louis, Mo., Omaha, Nebr., and Denver, Colo., to Pecos, Tex., are excessive, unreasonable, and unjust; but it was stated at the hearing by representatives of the complaining company that the only purpose of the complaint is to test the lawfulness of defendants' charge of greater compensation for transportation of commodities from the points named to Pecos than to Big Springs and El Paso, Tex. It is alleged that the traffic passes through Pecos to reach Big Springs and El Paso, longer distances over the same line and in the same direction, and that the shorter hauls to Pecos are included within the longer hauls to Big Springs and El Paso, in violation of section 4 of the act.

Facts necessary to be here considered are as follows:

Complainant is a Texas corporation engaged in a general wholesale and retail merchandise and farm machinery business at Pecos, located at a junction of the Texas & Pacific and Pecos River railroads, the latter being a subsidiary line of the Santa Fe System. Pecos is 215 miles east of El Paso and 135 miles west of Big Springs. The complaining company does business to the amount of \$300,000 to \$350,000 a year and pays about \$30,000 a year in freight charges. It employs one traveling man who makes sales of goods to points 125 miles west and 87 miles east of Pecos on the line of the Texas & Pacific, and about 65 miles north of Pecos on the line of the Santa Fe. It meets in competition wholesale merchants of El Paso, Big Springs, and Roswell, N. Mex., as well as jobbers of more distant and important points. There are located at Pecos several smaller concerns which conduct a limited amount of wholesale business. The population of Pecos is about 1,500, of El Paso about 35,000, and of Big Springs about 5,000. El Paso is located on the border between Texas and Mexico, about 800 miles from the Pacific Ocean, and is a junction point of the El Paso & Southwestern System, Southern Pacific, Santa Fe, and Texas & Pacific railroads, and two Mexican railroads—the Mexican Central, and Rio Grande, Sierra Madre & Pacific.

The complaint brings in issue all class rates on commodities originating at the points named and transported to Big Springs, Pecos, and El Paso. Class rates to El Paso and Pecos, and to Roswell, Albuquerque and Las Vegas, N. Mex., which were at the time of filing the complaint and are now in effect are shown by the following tables:

TO EL PASO, TEX.

From—	1	2	3	4	5	A	B	C	D	E
Chicago.....	169	150	134	126	93	98	89	70	57	49
St. Louis.....	149	134	122	116	86	89	81	63	51	44
Omaha.....	164	146	131	123	90	94	85	67	55	47
Denver.....	149	134	122	116	86	89	81	63	51	44

TO PECOS, TEX.

Chicago.....	193	166	147	136	102	108	97	79	66	58
St. Louis.....	173	150	135	126	95	99	89	72	60	53
Omaha.....	188	162	144	133	99	104	93	76	64	56
Denver.....	173	150	135	126	95	99	89	72	60	53

TO ROSWELL, N. MEX

Chicago.....	202	180	147	129	103	110	96	80	65	58
St. Louis.....	182	160	137	124	98	103	89	75	60	53
Omaha.....	200	172	150	133	104	109	94	73	60	52
Denver.....	165	143	122	111	85	91	79	66	53	43

TO ALBUQUERQUE, N. MEX.

Chicago.....	232	210	180	152	122	131	111	87	73	64
St. Louis.....	212	190	170	147	117	124	104	82	68	59
Omaha.....	200	172½	152½	133½	106	112½	94½	73½	61½	53½
Denver.....	88	85	82	77	74	78	60	48	43	36

TO LAS VEGAS, N. MEX.

Chicago.....	232	210	180	152	122	131	111	87	73	64
St. Louis.....	212	190	170	147	117	124	104	82	68	59
Omaha.....	200	172½	152½	133½	106	112½	94½	73½	61½	53½
Denver.....	88	85	82	71	63	57	48	35	30	26

It does not appear that there is any movement of traffic from any of the originating points named to Big Springs via Pecos or to Pecos via El Paso. Big Springs is situated on the western border of Texas common point territory and Pecos under existing tariffs takes differentials higher than Texas common points. The short line to El Paso from Denver does not pass through Pecos, the route being via Trinidad, Colo., and Albuquerque, N. Mex. The distance however from Denver to Pecos and El Paso is approximately the same, about 850 miles.

Most of the traffic destined to El Paso from St. Louis and Omaha and points taking the Chicago rates passes through Pecos. Shipments from Chicago may be made to El Paso via the Rock Island to 13 I. C. C. Rep.

Santa Rosa, N. Mex., thence via the El Paso & Southwestern System, a distance of 1,465 miles. El Paso and Pecos are reached by the Santa Fe which owns lines reaching from Chicago to those points. The distance from Chicago to El Paso via this line is 1,630 miles. The short line distance from St. Louis to El Paso is 1,351 miles.

The greater charge to Pecos is attempted to be justified in part by a statement of the traffic manager of the Texas & Pacific to the effect that shortly after the passage of the Interstate Commerce act in 1887 application was made by receivers of that road to the Commission for relief under the proviso to the fourth section and for permission to charge lower rates to El Paso than to points east thereof; that such permission was granted; and that rates were made and have since been maintained upon that basis.

Records of the Commission show that receivers of the Texas & Pacific Railway Company made application on April 4, 1887, to the Commission for relief as above stated, and that on April 19, 1887, an order was entered suspending the operation of the section so far as that road and shipments to El Paso were concerned for a period of ninety days. Afterwards, and on June 15, 1887, the Commission announced a decision to the general effect that railroad companies in the first instance should determine for themselves whether transportation to longer distance points is conducted under substantially similar circumstances and conditions as that to shorter distance points on the same line and in the same direction, taking into consideration water and rail competition, which determination is subject to change in a proper case upon finding and order of the Commission. 1 I. C. C. Rep., 31.

It appears that continuously since 1887, except for the period between May 22, 1900, and January 1, 1903, freight rates to El Paso from the points designated in the complaint have been lower than those to Pecos.

It is further contended in behalf of defendants that transportation of freight to El Paso is not made under substantially similar circumstances and conditions as to Pecos; that El Paso is reached by four railroads which are competitors for business from points of origin named; that to three Mexican gateways, Laredo, Eagle Pass, and El Paso rates have been and must be maintained at the same figure; that Laredo which is 300 miles nearer Chicago than El Paso fixes the rates to the Mexican border which are very low; that water rates from St. Louis to New Orleans and the Gulf of Mexico and Mexican ports, and rates to and through the port of Galveston influence rates to El Paso and the other Rio Grande crossings; and that rates to wholesale dealers in El Paso must be maintained at a low average to enable them to compete for Mexican business with jobbers located at the other gateways.

Examination of tariffs on file with the Commission shows that rates to points in Arizona and New Mexico about 215 miles in a northerly direction from El Paso, and at even greater distances, are much higher than those to Pecos, and that rates to points southeast of El Paso on the Southern Pacific are fixed at about the same relation as those to Pecos.

It is stated in behalf of defendants that prior to May 22, 1900, the Santa Fe put into effect "jobbers rates" to points north of Pecos and that to equalize those rates Pecos was put on an equality with El Paso with respect to all shipments from distant points in the north and east. The results were unsatisfactory to the roads and shippers generally and on January 1, 1903, rates to Pecos were made differentials higher than Texas common-point rates.

No evidence was submitted with respect to the reasonableness of any rate *per se*, and while it may be that some class and commodity rates to Pecos are too high no finding with respect thereto can be made on this record. The only purpose of filing the complaint is to test the lawfulness of the charge by defendants of higher rates to Pecos than to El Paso. Thus the one question presented for our determination is whether lower rates to El Paso than to Pecos from the points named are under existing circumstances and conditions in violation of the fourth section of the act?

It is now well settled that competition with other carriers at a longer distance point may justify lower freight rates to that point than to neighboring shorter distance points not having the same competition. *Cincinnati, New Orleans & Texas Pacific Railway v. Interstate Commerce Commission*, 162 U. S. 184; *East Tennessee, Virginia & Georgia Railway v. Interstate Commerce Commission*, 181 U. S. 1; *Interstate Commerce Commission v. Louisville & Nashville Railroad*, 190 U. S. 273. El Paso is reached by four railroads which compete for business from the points named in the complaint. Rates from those points are influenced by the location of El Paso as a Rio Grande River crossing in relation to other river crossings. For more than seventeen years prior to 1900 and since 1903 freight rates to Pecos from points east and north have been uniformly higher than those to El Paso. The fact that for a brief period rates were the same is not conclusive that a higher charge to Pecos is unlawful. Pecos enjoys more favorable rates generally with relation to El Paso than points north, northeast and southeast of the latter place. This relation has been maintained for a long period of years. In the recent case of *Roswell Commercial Club et al. v. Atchison, Topeka & Santa Fe Railway Company et al.*, 12 I. C. C. Rep. 339, the Commission considered and fixed rates to Roswell, Carlsbad, Artesia and Hagerman, N. Mex., with reference in part to the rates in effect at Pecos. This is not a case in which all the rate adjustments covering the great territory

surrounding El Paso and Pecos can be considered and determined with any assurance that justice to carriers, localities, and shippers would result.

There can be no doubt that competitive conditions exist at El Paso that do not exist at Pecos. Circumstances and conditions with respect to transportation at the former are not the same as at the latter place. Following the decisions of the Supreme Court of the United States the Commission is bound to give consideration and full effect to competition in passing upon the question here involved.

Upon the question whether particular rates charged Pecos are higher than competitive conditions at El Paso warrant, no evidence was submitted and no opinion with respect thereto is expressed.

Under the circumstances and conditions shown to exist in this case we are unable to find that the class rates now in effect for transportation of property from the points named to El Paso unduly prejudice Pecos, or that the lower rates to El Paso constitute a violation of the fourth section of the act as that section is construed by the courts. The complaint therefore must be dismissed. An order will be entered accordingly.

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No. 1033.

HENRY RUTTLE, DANIEL LEONARD, AND DAVID H.
CROREY

v.

PERE MARQUETTE RAILROAD COMPANY.

Submitted October 1, 1907. Decided March 2, 1908.

1. While the right to use private cars may doubtless be denied to shippers by appropriate legislation, in the absence of a specific enactment to that effect the Commission is not prepared to say that their use in itself is unlawful; but if their use results under a given set of circumstances in an unlawful advantage to their owners and an unlawful disadvantage to other shippers, a question is presented which under existing legislation is within the control of the Commission and may be made the basis of such relief as the facts may justify.
2. Because of defendant's insufficient equipment a number of worn-out cars no longer serviceable for interstate movements were acquired and fitted up by certain shippers for the transportation of their hay from local points on the Port Austin division of defendant's line to junction points with other lines, where the hay was transferred to empty system cars and moved forward to eastern markets; *Held*, that defendant's course in stopping its own cars as well as the cars in its control of connecting carriers, at such junction points, there to be loaded with hay from the "private" cars, instead of sending them up the line to the loading points where all the shippers might share in their distribution, was to the detriment and at the expense of complainants and other independent dealers, and amounted to a denial to the complainants of the equal enjoyment of the facilities of defendant and was therefore an unlawful discrimination.

*Alexander B. Simonson and Robert M. Brownson for complainants.
Charles McPherson and Frederick W. Stevens for defendant.*

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The Port Austin division of the defendant railroad company traverses that part of the state of Michigan that lies north of Lake St. Clair and south of Saginaw Bay and which, because of its conformation as it appears on the map, is sometimes referred to locally as

the "thumb" district of the state. It is said to be one of the best hay-producing sections in the United States. Carsonville, where the complainants and other shippers of hay have built more or less extensive storage sheds, is about midway between Port Huron and Port Austin, and seems to be the most important shipping point in the district. But hay in bulk is also shipped to interstate markets from Berkshire, Sandusky, McGregor, Downington, Applegate, and other adjacent points on that division of the defendant's lines.

Notwithstanding its very large production of hay, the business of buying and shipping that commodity has not progressed in a way to satisfy the anticipations of the hay dealers in the locality in question. This has been due primarily to the deficiencies of the defendant company in the matter of freight-car equipment. Its counsel admitted on the hearing that during the last four or five years it has not been able to furnish cars in sufficient numbers to move the traffic offered. The shortage seems to have been especially severe with the shippers of hay. Statements offered by complainants Ruttle and Crorey show a steadily diminishing number of carload shipments made by them during the last six or seven years. It is said that from October 1, 1906, until June 1, 1907, not a single empty system car was sent up to Carsonville for the movement of hay to interstate points. The only cars the complainants were able to obtain during that period were cars that had come into Carsonville loaded with general merchandise consigned to persons doing business there. In one or two instances the hay shippers were able to get possession of an additional car by having their own men transfer its contents, billed to points beyond Carsonville, to other cars in the train, thus making it available for a return movement of hay.

The general situation has been further complicated by the anomalous use made by some dealers of the so-called private hay cars. This practice, which is of recent origin, has been encouraged and is now defended by the Pere Marquette Railroad Company on the theory that it results in moving out of the district a larger tonnage of hay than would otherwise reach the consuming markets; and undoubtedly it has increased the volume of the traffic of shippers who are able to and do use the private cars. But it is strongly urged by the complainants that the use of such cars by their competitors results in an unlawful discrimination, which, coupled with the general car shortage, has so far destroyed their opportunities to ship hay as to make it doubtful whether they can longer continue in business. Whether it is in law a discriminatory practice is a question of no small importance. It seems to have originated in 1904. A large shipper of hay conceived the plan of buying from an eastern road some old coal cars which, because of their light construction, were not

suitable for service in the heavy trains now used on the through lines. At small expense they were equipped for the movement of hay and were then sent to the Port Austin division of the defendant company. Other shippers, quickly perceiving the advantages arising from their use, made arrangements at Chicago to rent old and worn-out stock and other cars that were no longer acceptable for interstate movements. After being fitted up for the hay traffic these cars were also sent to the lines of the defendant.

The cars so purchased or leased are referred to in this record as private cars. Because of their inferior construction and worn-out condition neither the defendant nor its connections will use them for through shipments. They are permitted to run only from Carsonville, and other local points on the Port Austin division of defendant's lines, to Port Huron, Toledo and Saginaw. On reaching these junction points the hay is transferred to the regular equipment of the defendant or its connections, and is thus sent forward to eastern markets. By keeping them moving back and forth between the local shipping points and the junction points, the owners or lessees of the private cars are able to get a very rapid and effective service out of them. As the distance is only 38 miles to Port Huron the cars can be run there and back again to the shipping point in two or three days. There is some indication in the record that it not infrequently happens that the round trip can be made in one day, thus making the private car available for loading again on the same day and an early movement out on the following morning. Occasionally a train is made up consisting almost entirely of private cars. At the junction or transfer points the shippers who use private cars have storage sheds where the hay can be held, if necessary, until the Grand Trunk at Port Huron, or the Pennsylvania or the defendant at Toledo, furnishes regular empty cars for taking it to eastern destinations. From the junction or transfer points the shipments go forward on the balance of the through rate, except when taken east by the Grand Trunk from Port Huron, in which event the local rates to and from the transfer point are applied.

While those who own or lease the private cars are thus getting their hay rapidly to the junction points, and thence to the consuming markets, in the empty system and foreign cars which are there provided for the further movement, the other dealers at the points of origin either receive no empty cars at all or are able to secure them in very limited numbers. Although such dealers may have their sheds full of hay waiting for cars, they are unable either to move it or safely to make additional purchases. On the other hand the users of the private cars, without incurring expense for storage sheds, can go into the same community, buy all the hay offered for sale, and at once

move it out to the junction point and get it forwarded promptly to the markets. Private cars in large numbers are thus hauled back empty from the junctions to Carsonville and other loading points, while for months no empty system car was brought up the line for the use of the hay dealers who have no private cars. The empty system or foreign cars get no farther than the transfer points.

Two advantages result to the users of private cars from these conditions. The custom is established of paying the farmers for their hay when the shipment actually moves; and the farmers are willing to sacrifice something in the selling price in order to get their money promptly. The private-car owners therefore not only get prompt movement for their hay as soon as they buy it from the producers, but because of the prompt movement they are able to buy it at a less price than the dealers who have no private cars and whose shipments are therefore delayed for uncertain periods of time until system cars can be furnished. It is true that in addition to the cost of purchasing the cars, or to the monthly rental that must be paid by those who lease them only, there is some outlay in making the transfer of the hay at the junction points. These items of expense are avoided by shippers who use the system cars only, for such cars go through to destination without transfer. But this additional cost to the private-car shippers is probably more than absorbed in the lower price at which they are able to buy the hay from the producers; and as they use the private cars as warehouses they are not under the expense borne by other shippers of maintaining warehouses at the shipping points. In view also of their larger and quicker sales the private-car owners can doubtless do business successfully on a narrower margin of profit. Although there are only four such dealers in the district, they shipped out 65 per cent of the hay during the season of 1907.

Such is the general trend of the testimony offered by the complainants. On the part of the defendant attention was called to its rules governing the distribution of cars, which provide, among other things, that "the cars owned or leased by shippers must be counted in as their share of available equipment." Although it is said by one witness for the complainants that the private-car owners get their full quota of system cars in addition to their own private cars, this is denied by the defendant. And as indicating the strict enforcement of the rule, the defendant showed, by way of illustration, a record of 71 carloads of hay shipped out of the thumb district by the McMorran Milling Company between October 5, 1906, and June 19, 1907, of which only one carload went forward to the junction point in a car belonging to the defendant; the remaining 70 carloads went out of the district in the private cars of the McMorran Company.

That the tendency of such a rule is good when there are system cars to distribute is undoubted. But the rule does not and lawfully can not operate to give to the independent shippers the use of the private cars that belong to others; and therefore when there are no system cars at the loading points to distribute the rule is wholly ineffectual; the independent shippers get no cars, while the owners of the private cars have them always at hand promptly to move such hay as they can purchase. Without offending the terms of the rule in any respect, the private cars may be kept running back and forth to and from the junction points. There those who own or lease them get all the empty system cars they need to carry their hay to the markets; while the other dealers waiting for empty cars at the loading points get none at all. When there are a few cars available at the loading points for distribution, the small proportion of them allotted to the complainants is of little value in their close competition with the owners of the private cars, all of whose requirements in the way of equipment are fully met at the transfer points. The fact that the complainants get their full share of cars at the loading points modifies only in a small degree the disadvantage under which they labor in not participating in the distribution of the cars that are put at the sole disposition of the private car owners at the transfer points. The course of the defendant in setting cars at the transfer points for the use of the private car owners, instead of taking them up the line to the loading point for the use of all the shippers, is no less unfair to the complainants and the other independent dealers than it would be if the discrimination in the distribution occurred at the loading points. The defendant's practice in that connection simply transfers the place of doing the wrong from the loading points to the transfer points. Of the 70 carloads of hay referred to the record shows that 63.38 per cent was transferred at Port Huron to system cars or to foreign cars under the control of the defendant, all of which could doubtless have been sent up its line 38 miles to the loading points for equal and fair distribution among all the hay shippers, instead of being stopped at the junction point for the sole use of a few particular shippers who were able to bring hay to that point in their private cars.

But it is contended that the handling of the traffic with the aid of the private cars in the manner described adds to the defendant's equipment and thus indirectly benefits shippers who do not use private cars, because, under the rule for car distribution heretofore mentioned, additional system cars that otherwise would go to the owners of the private cars are put at the service of the independent shippers. It is also insisted, as heretofore stated, that because of the private cars a larger tonnage of hay is moved out of the district

than would be possible in any other way. This is probably true. But that fact does not satisfy the demands of the law if it results in an unlawful advantage to some of the shippers at the expense of other shippers in the district. The characteristic and most salutary feature of this legislation is that it assures to all shippers under like circumstances the equal enjoyment on equal terms of the facilities and services of interstate carriers. And so even though this community as a whole may have received a larger benefit from such use of private cars than it otherwise could, that can not excuse or justify a practice that disregards the rights or destroys the opportunity or prejudices the business of the individual shipper, and gives undue advantages to his competitors.

Much of the hay carried to Port Huron in private cars at the time in question was there transferred and went forward to destination over the Grand Trunk Railway in Grand Trunk cars. But this was an outlet that was not enjoyed by the complainants or the other so-called independent shippers. They had no cars with which to carry their hay to Port Huron. The few Grand Trunk cars that were brought up to Carsonville were especially carded or manifested to particular shippers. They were not available to hay dealers generally. The reason for this, as stated by the defendant, is that the Grand Trunk was unwilling to permit its cars to leave its own rails. It is not unusual for carriers to do what they can to keep control of their own equipment, especially when traffic is moving in large volume. But they are always anxious to accept traffic when they have cars to move it; and if the Grand Trunk Railway was willing to consign its cars to particular shippers up the line of the defendant, it is altogether probable, with a proper guaranty by the defendant of their prompt return loaded to its rails, that it would then have been willing and would now be willing to send cars up the line to Carsonville for the use of the hay shippers in general. The defendant by demanding such assurances from its connections at Toledo was able at this same time successfully to move the potato crop of the district to eastern markets. A large number of its cars were specially assigned for that traffic and the agreement by connecting lines to return them promptly to the defendant's rails was fully respected by them. By making such an arrangement with the Grand Trunk Railway for participating in moving the hay crop, the defendant of course would have had a haul of only 38 miles instead of the longer haul to Toledo and the still longer haul to Suspension Bridge, and would have received less revenues than it actually did. But it would have fulfilled its obligation to these shippers to move their hay to the markets with reasonable promptness. Whatever rates were lawfully applicable through the Port Huron gateway—whether local rates as stated by

the defendant, or through rates as seem to be indicated by the records of the Commission—the owners of the private cars took full advantage of that route, and doubtless the independent shippers would have been glad to do so had the opportunity offered. But for all practicable purposes that route was closed to the independent shippers.

The contention of the complainants is that the private cars should be required to go through to destination or that their use should be prohibited altogether. The record shows that their condition is such as to make it unsafe and therefore improper to require them to be hauled through to destination. And no sufficient reasons have been suggested for holding that the use of such cars in itself is unlawful. Most of the early charters granted in this country were framed upon the theory that railroads were highways in the ordinary and usual sense of that word, and that any shipper who could provide himself with a locomotive and the necessary cars had the right to travel and transport his property over them, subject only to the payment of reasonable tolls for the privilege. This theory has long ceased to be of practical importance in this country. The lack of economy to shippers in owning and running their own cars and locomotives soon made it evident that the railroad companies themselves must provide equipment and operate their roads for the shipping public. Under various state statutes subsequently enacted and under the act to regulate commerce as amended, it has, in fact, now become the affirmative duty of railroad companies to conduct the transportation over their respective lines, and to supply the necessary cars and locomotives for safely and promptly moving the traffic offered. The only remnant that survives of the original conception of railroads as public highways in that sense is the use of private cars, which some shippers insist upon for special reasons connected with their business and other shippers resort to in order to supplement the deficient equipment of the carriers. But while the right to use private cars may doubtless be denied to shippers by appropriate legislation, we are not prepared, in the absence of a specific enactment to that effect, to say that their use is in itself unlawful. Whether under a given set of circumstances their use results in an unlawful advantage to their owners and in an unlawful disadvantage to others is another question, which under existing legislation is clearly under the control of the Commission, and may be made the basis of such relief as the facts in any particular case may justify. When considered from this point of view, the defendant's course in stopping its own cars at the junction points as well as the cars under its control of connecting carriers, and there putting them at the disposition of the owners of the private cars instead of sending them up the Port Austin division for equal distribution among all the

dealers, amounted in our judgment, as we understand the record, to a denial to the complainants of an equal enjoyment of the facilities of the defendant and therefore was an unlawful discrimination. The hay traffic of the thumb district originates at the loading points and is no proper part of the commerce of Port Huron, which is a mere gateway for the traffic to the eastern markets. Both the independent dealers and the private car owners are conducting their hay shipping business at the shipping points; it is one and the same traffic, whether done by one class of shippers or by another. And manifestly all the cars, whether those belonging to the defendant or those in its control and belonging to connecting lines, that are used in transporting the hay produced in and shipped out of the district, ought to be distributed upon some plan that will give to all the individual shippers a fair distributive share.

We shall make no order at this time governing the distribution of cars for the future in moving the hay traffic from this district. It would be well, however, for the defendant at once to arrange a conference with a representative committee of hay shippers along its Port Austin division, embracing those who lease and own the so-called private cars, and those who do not, including the complainants, with the view to arriving at some further understanding with respect to the distribution of cars for the coming hay shipping season on a more equitable basis. In this connection the fact that the defendant specially assigns a large number of cars for moving the potato crop while assigning none at all to the special service of moving the hay crop must not be overlooked. Unless some plan can be agreed upon and reported to the Commission by April 20, 1908, the Commission will take the matter up for further consideration and will enter whatever order may be required to secure a more equitable distribution of equipment for this traffic. It is understood that the road and other property of the defendant company while not actually are nevertheless technically still in the possession of a receiver. He is a party defendant in this proceeding and will be included as such in any order that may be hereafter entered herein.

13 I. C. C. Rep.

No. 1259.

CHICKASAW COMPRESS COMPANY

v.

GULF, COLORADO & SANTA FE RAILWAY COMPANY
AND ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY.

No. 1260.

PAULS VALLEY COMPRESS & STORAGE COMPANY

v.

GULF, COLORADO & SANTA FE RAILWAY COMPANY
AND ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY.

Submitted January 7, 1908. Decided March 10, 1908.

1. Complainants, owning cotton compresses at Ardmore and Pauls Valley, Okla., respectively, allege that the practice of defendants whereby cotton originating at points north of Ardmore and Pauls Valley is carried by those points to Gainesville, Tex., for compression, while cotton originating at points south of Gainesville is not permitted to be carried north through Gainesville to Ardmore and Pauls Valley for compression, results in unjust discrimination against complainants; and ask that this Commission establish a rule requiring defendants to have all cotton compressed by the compress nearest the point of origin.
2. Carriers are permitted to adjust their rates, regulations, and practices with due regard to the circumstances and conditions confronting them and the natural currents and laws of trade and commerce.
3. The movement of cotton from points in Texas northwardly for compression at Ardmore and Pauls Valley from as far south of Gainesville as cotton may be moved to Gainesville from points north of Ardmore and Pauls Valley would not be affected unless the rates from such points of origin should be protected, irrespective of whether or not a higher rate is in

effect from the compress point, and to require this would be to entirely disregard the back haul and the added expense incident thereto. The movement of cotton is almost entirely southward from all points located on defendants' lines, and cotton originating at points north of Ardmore and Pauls Valley naturally moves through Gainesville when transported by defendants. To require the defendants to haul cotton northwardly through Gainesville for compression at Ardmore and Pauls Valley, and to protect on such shipments rates not higher than those in effect from points of origin to ultimate destination, where such cotton must be ultimately hauled back through Gainesville to southern ports, would not be justified upon the record. *Held*, under the circumstances and conditions shown to exist in these cases, that the discrimination complained of is not undue. Complaints dismissed.

Ledbetter & Moore for complainants.

A. A. Hurd, Robert Dunlap and J. L. Coleman for defendants.

Stuart & Bell for North Texas Compress & Warehouse Company, Intervener.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The only cause of complaint as stated in the original petition of the Chickasaw Compress Company, located at Ardmore, is briefly comprehended as follows:

That under these rules and regulations the defendant railway companies have permitted shippers interested in compresses at Gainesville and Fort Worth, Tex., to ship a large amount of cotton each year through Ardmore, where the complainant's compress is located, to Texas points, thus discriminating against Ardmore and the complainant's compress located there, and under this practice from 15,000 to 25,000 bales of cotton have been shipped through Ardmore to Texas compresses, most of which could have been compressed at Ardmore, or at the compress located at Pauls Valley.

The prayer of the original petition was that the practice of permitting shippers to concentrate cotton at Gainesville and other Texas points from the vicinity of Ardmore and from points north of Ardmore, be prevented.

The petition and prayer of the Pauls Valley Compress & Storage Company is identical with that of the Chickasaw Company except the name of complainant and the location of the compress.

The purpose of the complaints is further illustrated by the following statement of Mr. L. H. Love, president of the Chickasaw Company and director of the Pauls Valley Company, while testifying:

The main contention is that the presses in each locality should be entitled to the cotton in that section.

In other words, the original complaint was neither more nor less, in substance, than that the Commission should require the defendant carriers to have all cotton compressed by the compress nearest the

point of origin. Clearly, the Commission has not been vested with authority to prescribe such a rule. It is probable the object sought by complainants would in great measure be accomplished by a requirement that different rates on compressed and uncompressed cotton should be applied if it should be determined upon full investigation that the present practice of charging the same rate on both with the right of compression in transit reserved to the carrier is unjust to the shipper who offers for shipment cotton already compressed. That question, however, is not presented in this case.

The only other question involved is that presented by the amended petition to the effect that the practice of defendants under their rules permitting cotton originating at points north of Ardmore and Pauls Valley to be carried by those places to Gainesville for compression, while not permitting cotton originating south of Gainesville to be carried north to Ardmore and Pauls Valley for compression is an undue discrimination against complainants.

As affects the business here involved, the present tariff rules of defendants relating to the compressing of cotton result as follows:

First. All cotton originating at Pauls Valley, Ardmore, or Gainesville, all located on the same division of the road, the latter being at the southern terminus thereof, must be compressed at each of these points, respectively.

Second. Cotton moving south, originating at points, other than compress points, in Oklahoma between Guthrie and Gainesville may be compressed at Oklahoma City, Purcell, Pauls Valley, Ardmore, or Gainesville, these being all the compress points between Guthrie and Gainesville, including the latter.

Third. Cotton moving north, originating at any point between Gainesville and Purcell, other than compress points, may be compressed at either Gainesville, Ardmore, or Pauls Valley.

Fourth. Cotton moving north, originating south of Gainesville, must be compressed at the first compress point.

In view of the facts disclosed, the so-called discrimination is more apparent than real. While the general rule of the defendants is to the effect that cotton must be compressed at the nearest compress to the point of origin in the direction of its movement, which rule has many exceptions, the division between Gainesville on the south and Purcell on the north of about 100 miles, upon which both Ardmore and Pauls Valley are located, is by another rule placed on a different basis, as above stated, and this appears not to be to the disadvantage of complainants when considered as an independent matter from the rates, in that it permits the hauling of cotton from points on this division in either direction to these places, regardless of the direction of final destination. While it is contended by complainants that they

should be favored with the privilege of movement of cotton from points in Texas northwardly for compression at their plants from as far south of Gainesville as cotton may be moved to Gainesville from points north of Ardmore and Pauls Valley, it is conceded by them that a mere order or rule permitting, or requiring, this to be done would be of no value and would produce no such movement, unless the rate from the point of origin should be protected when finally shipped from Ardmore and Pauls Valley, thus abrogating the almost invariable rule of the carriers that when there is a back haul to the compress point from which there is a higher rate to final destination than from point of origin, the higher rate shall apply.

The through rate to Boston and other eastern points from all points on defendants' lines south of the Kansas-Oklahoma line to Davis, a small station a few miles north of Ardmore, is \$1.05, whether all rail or part rail and part water through the Gulf ports, while from Ardmore it is 97 cents. The rates to Galveston vary somewhat according to the distance, being higher from Guthrie and other points in the northern part of Oklahoma and growing less from the stations or groups of stations south.

The rate from Guthrie and all points south as far as Winnwood, a few miles north of Ardmore, is 70 cents; from the latter place it is 57 cents; and 55 cents from Marietta and points south to and including Fort Worth. The through all-rail rates referred to are controlled by water transportation from the Gulf ports.

Practically no cotton being manufactured in this section and there being grown a large surplus of the staple in the Southern States east of Texas and Oklahoma in excess of that consumed there, which surplus must find its sale in foreign countries, it naturally follows that most of the cotton produced in Texas and Oklahoma goes to the Gulf ports for export on account of cheaper transportation by water and the nearness of this source of supply to the ports, and it is plain that it is more advantageous to the producers of cotton in this section to export it than pay the all-rail rates to Eastern markets in competition with cotton grown in the southeastern States, so much nearer to the places of consumption. Under these conditions and in view of the rates above stated, the movement of cotton is almost entirely southward from all points along defendants' lines.

It also appears that a very small quantity of cotton is produced at points between Fort Worth and Gainesville, probably not more than 5,000 bales in a favorable season and much less than that on an average.

It is plain, therefore, that a requirement to the effect that so long as cotton is permitted to be hauled from points north of Ardmore and Pauls Valley to Gainesville for compression, the same privilege should

be extended to the movement of cotton from points south of Gainesville to Ardmore or Pauls Valley for compression, would be the mere declaration of a theory and of no consequence whatever to these complainants, unless at the same time, as above stated, we should require the carriers to protect the lower rate from the point of origin nearer Galveston, regardless of the back haul and the added expense incident thereto. It was distinctly admitted by the principal witness, Mr. Love, president of one of these complainant companies and a director of the other, that such a requirement as the first above stated would be useless to complainants without an additional requirement for the application of the lower rate from the point of origin, notwithstanding the back haul to a higher rate point for compression. It is shown that of 1,187,000 bales of cotton originating on the Santa Fe System, only 32,000 bales, or less than 3 per cent, went north, and most of this was shipped to Japan via the Pacific coast, the rates to Japan being \$1.35 from all points in this region.

Carriers must be permitted in the general management of their business to adjust their rates, regulations and practices with a due and reasonable regard to the circumstances and conditions confronting them and to the natural currents and laws of trade and commerce, but always without unjust discrimination. We are unable to find in the facts appearing any such discrimination.

The decision of the Commission in the case of the *Muskogee Commercial Club et al. v. Missouri, Kansas & Texas Railway Company*, 12 I. C. C. Rep., 312, is not an authority for such an order or requirement as would be necessary in these cases to effect the purposes of complainants. A similar order in these cases to that in the Muskogee case would, as applied to the situation here, be purely theoretical, and would have no practical effect except possibly to disturb conditions not complained of elsewhere along the line of these roads. It follows that the complaints must be dismissed.

An order will be entered in accordance with the views herein expressed.

No. 1209.

R. H. COOMES AND E. I. MCGRAW, A PARTNERSHIP UNDER THE
NAME OF COOMES & MCGRAW,

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY AND CHICAGO, ROCK ISLAND & PACIFIC RAIL-
WAY COMPANY.

Submitted February 4, 1908. Decided March 10, 1908.

1. Complainant shipped over defendants' lines from Elk City, Okla., seven car-loads of broom corn to Sioux City, Iowa, via Omaha, paying 60.85 cents per 100 pounds on one car, 80.5 cents per 100 pounds on another car, and on the remaining five cars \$1.14 per 100 pounds. The combination of local rates on this commodity from Elk City to Sioux City, based on Omaha, is 60.85 cents per 100 pounds, whereas the joint through rate was at the time of the shipments \$1.14; but subsequently defendants voluntarily established a joint through rate of 60.85 cents. Pending protest against paying the \$1.14 rate on two of these cars, unloading was delayed, causing demurrage charge, which was paid by complainant.
2. Rates duly established in accordance with the requirements of the act to regulate commerce are binding upon carriers and shippers alike so long as they remain in effect. The law requires that such rates shall be reasonable and just and authorizes the Commission to award reparation on account of the exaction of unreasonable transportation charges. It follows that although a rate is by the terms of the law binding upon all so long as it remains in effect, such rate may be found and declared to be unlawful and reparation awarded on account of its exaction. To hold otherwise would be to make the mere establishment of rates by a carrier conclusive of their reasonableness and justness and leave shippers without recourse for the recovery of excessive charges. It is the duty of carriers and shippers to observe the established rates, and there can be no waiver of demurrage charges which accrue by reason of the refusal of consignees to accept shipments and unload cars pending a contest or dispute as to the reasonableness of the established rates. *Held*, upon the foregoing facts, that the joint through rates of 80.5 cents and \$1.14 were unjust and unreasonable, in so far as the same exceeded the sum of the locals, and reparation awarded on that basis; but reparation on account of demurrage charges denied.

Charles A. Dickson for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Com-
pany.

W. M. McHugh and *E. B. Peirce* for Chicago, Rock Island &
Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Complainant is a partnership engaged in manufacturing brooms at Sioux City, Iowa. In October, 1906, it shipped from Elk City, Okla., seven carloads of broom corn via the Chicago, Rock Island & Pacific Railway to Omaha, thence via the Chicago, Milwaukee & St. Paul Railway to Sioux City, Iowa. On the first one of these cars the carriers collected 60.85 cents per 100 pounds, on another 80.5 cents, and on the remaining five cars \$1.14. All the cars were loaded in excess of the minimum tariff requirements, and the total weight of the loading of all but the first car was 148,500 pounds. The total freight collected on the six cars referred to was \$1,632.75. There has been continuously in effect by the Chicago, Rock Island & Pacific Railway from Elk City to Omaha a rate of 51.50 cents on this commodity in carloads and over the Chicago, Milwaukee & St. Paul a rate of 9.35 cents from Omaha to Sioux City for a period long prior to the date of these shipments up to the present time. The sum of these locals was the rate of 60.85 cents applied on the first one of the seven cars referred to. These defendants voluntarily established a joint through rate of 60.85 cents from Elk City to Sioux City, effective August 29, 1907. The \$1.14 rate charged was the third-class rate.

It also appeared at the hearing that upon the demand by the carriers for the rate of \$1.14 upon the first two of these cars charged for on that basis, and pending protest against the same on the part of the complainant, the unloading of two of the cars was delayed, in consequence of which there accrued on them demurrage to the amount of \$16, which was also paid by complainant. There was no dispute as to these facts.

The complaint is that the rate of \$1.14, in so far as the same exceeded 60.85 cents, the sum of the locals above referred to, was unreasonable and unjust. Reparation is asked in the sum of \$729.13, this being the difference between \$1,632.75, the amount actually collected, and \$903.62, which would have been the total charge on the basis of the combination rate of 60.85 cents on all but the first one of these cars; also the additional sum of \$16 paid as demurrage.

The defendants in their answers deny that the rates charged were unreasonable or unjust, and the Chicago, Rock Island & Pacific further insists in its answer that inasmuch as the rates charged were according to the published tariffs they could not lawfully be deviated from "by authority of this Commission or any other tribunal," and that the Commission is without jurisdiction to award reparation.

All provisions of the act must be read and construed in the light of each other, so as to give due effect to the whole. No proposition

respecting the requirements of this act is more clearly and firmly settled than that rates duly established as therein required are absolutely binding upon carriers and shippers alike until lawfully changed as also therein provided, but this does not render nugatory the provision of the first section that all rates must be reasonable and just, nor the subsequent provisions authorizing the Commission upon proper showing to award damages resulting from violations of the act. It follows that, although a rate is by the terms of the law binding upon all so long as it remains in effect, such rate may, nevertheless, upon proper procedure, be found and declared to be unlawful in that it is unreasonably high or unduly discriminatory, and become in respect to shipments made while the unjust rate was in effect the basis of an award in damages. To hold otherwise would be to make the mere establishment of rates by a carrier conclusive of their reasonableness and justness while in effect. Poor indeed would be the plight of shippers who have been compelled to pay excessive rates under such interpretation of the law. While the establishment of rates by the carrier in the manner required by law fixes the standard of lawful rates for the time being and so long as such established rates are in effect, this standard is by no means conclusive of their reasonableness and justness.

Ordinarily for a continuous through shipment over two or more roads no reason exists for the establishment and exaction of a joint through rate in excess of the sum of the several voluntarily established local rates of the separate roads composing the through route. The joint through rate is generally less than the sum of such locals for the obvious reason, among others, perhaps, that there is substantially less expense to the carrier proportionately to the distance involved in the single through haul than in the several separate shorter hauls, with the more terminal expenses which the local rates had been made to cover. Where a joint through rate is higher than the sum of the locals voluntarily made by the separate roads composing the through line, it is for the carriers to show the justification therefor, if any exists. No testimony was offered by the defendants in this case and no justification appears for a joint through rate higher than the sum of the locals as to the commodity and shipments in question.

Upon full hearing and consideration of all the matters presented it is the opinion of the Commission that the rate of \$1.14 per 100 pounds on broom corn in carloads from Elk City, Okla., to Sioux City, Iowa, in effect over the line of the defendant carriers at the time the shipments involved moved was unreasonable, unjust, and therefore, unlawful in so far as the same exceeded 60.85 cents per 100 pounds. It is the conclusion of the Commission that the just

and reasonable maximum rate in lieu thereof for the future should not exceed 60.85 cents. It is the further conclusion of the Commission that complainant is entitled to an award of damages to be paid by the defendant carriers in the sum of \$729.13, with interest at 6 per cent per annum from November 1, 1906, on account of the excessive and unreasonable charges applied on the shipments stated.

It is clear that a shipper may decline to pay more than the established rates, and if his refusal to do so results in nondelivery of shipments he is not responsible therefor and should not be required to pay demurrage for refusing to accept the same or to unload the cars. But since it is alike the duty of both carrier and shipper to strictly observe the established rates, and since no other can lawfully be applied, only confusion, detrimental alike to the carriers and their patrons generally, could result from countenancing the practice of consignees in refusing to accept shipments and to unload cars pending a contest or dispute as to the reasonableness of the established rates. We do not, therefore, feel justified in awarding reparation on account of demurrage paid by complainant.

A proper order will be entered in accordance with these conclusions.

13 I. C. C. Rep.

No. 1036.

AMERICAN ASPHALT ASSOCIATION

v.

UINTAH RAILWAY COMPANY.

Submitted December 20, 1907. Decided March 11, 1908.

Where a railroad has been constructed for a special purpose, and does not form part of any general industrial development, it does not stand in the same relation to the public as a railroad chartered and built for general purposes, and the reasonableness of its rates must be determined by the financial returns which they produce rather than by comparison with rates in effect elsewhere.

Held, That under the peculiar circumstances of this case a rate of \$8 per ton is a reasonable charge to be imposed by the defendant for the transportation of gilsonite, a low-grade commodity, a distance of 54 miles.

Dines, Whitted & Dines for complainant.

Vaile & Waterman and *Henry McAllister, Jr.*, for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The Uintah Railway extends from Dragon, Utah, to Mack, Colo., where it connects with the Denver & Rio Grande Railway. It was constructed and is owned and operated by the Uintah Railway Company, the defendant.

The Barber Asphalt Paving Company owns substantially all the stock of the Uintah Railway Company. It furnished the means with which to construct the railway and superintended its construction in the name of the Uintah Railway Company.

The Gilson Asphalt Company is engaged in the mining and selling of gilsonite, which it mines in the vicinity of Dragon, transports over the Uintah Railway from Dragon to Mack and thence forwards by the Denver & Rio Grande to various destinations.

The General Asphalt Company owns all or substantially all the capital stock of the Gilson Asphalt Company and the Barber Asphalt Paving Company.

The complainant is a corporation having its headquarters at St. Louis, Mo., engaged in the mining and selling of gilsonite, which it obtains from a deposit in the vicinity of Dragon, hauls by team to Dragon, thence transports over the Uintah Railway to Mack, and so via the Denver & Rio Grande to various points of consumption. In the transaction of its business its product comes into competition with the gilsonite mined and handled by the Gilson Company, and the allegation of the complaint is that the General Asphalt Company, or these allied interests, impose upon the complainant an unreasonable rate for the carriage of its commodity from Dragon to Mack and also practice against the complainant other discriminations in respect to such transportation; and that the effect of all this is to crush the complainant as a competitor of the Gilson Company in the mining and selling of gilsonite.

Gilsonite is a mineral, a hydrocarbon in character, brittle, of about the specific gravity of water, intensely black in color. It seems to have been named from the person who discovered it, and has been for some time and still is extensively used in the preparation of paints and varnishes and of insulating material. Its use in the preparation of roofing material is also becoming extensive.

The deposit of this mineral in the United States seems to be confined largely, if not entirely, to certain parts of Utah. In putting it upon the market it is picked out by hand, placed in sacks, and in this form carried to destination. The sole business of the complainant association seems to be the mining and selling of this commodity for the various purposes above specified.

The Barber Asphalt Company is extensively engaged in laying asphalt pavement. In the past the asphaltum used by it for that purpose has been mainly drawn from Trinidad. Gilsonite is kindred to asphaltum, and it may have early occurred to the Barber Company that it might be used for paving purposes; at any rate, that company seems to have interested itself for some time in this mineral. Those connected with the Barber Company either promoted the Gilson Company or some time ago obtained a controlling voice in it. At present, as already said, the General Asphalt Company owns both the Gilson Company and the Barber Paving Company, thereby working a practical consolidation of these companies.

For a considerable time the Gilson Company seems to have been the only party supplying gilsonite for the various purposes for which it was used, both in this country and abroad. The deposits from which this supply was drawn were approximately 100 miles

from the railroad, and the mineral was hauled by team for this distance at great expense. Upon the discovery of these deposits at Dragon and their purchase by the Gilson Company, the Barber Company made certain tests for the purpose of ascertaining whether this gilsonite could be used for paving purposes, and finally came to the conclusion that it might be profitably employed in that business providing some means could be found for transporting it to market at a more reasonable cost. Thereupon the Barber Company set about devising some method by which this commodity could be carried at reasonable expense from Dragon to Mack.

Its first move was to consult engineers with a view to ascertaining what means of transportation might be employed, and various propositions were submitted to and considered by it, with the final result that the company became convinced that the only practicable way of bringing this commodity to the Denver & Rio Grande was by the construction of a railroad.

Thereupon the Barber Company, which transacted a very large business and had a high financial standing, approached the Denver & Rio Grande Railroad Company, representing to it that if Dragon were connected by railway with the Denver & Rio Grande the Gilson Company or the Barber Company, which was the same thing, would transport large quantities of this gilsonite to market over the lines of the Denver & Rio Grande. The latter company declined to consider the idea of constructing this railroad since, when built, it would only be available for the single purpose of carrying this mineral to market and would become worthless if for any reason gilsonite was no longer used in large quantities. The Barber Paving Company offered to guarantee the shipment of a certain number of tons for a given period of time, but the Denver & Rio Grande still refused to entertain the proposition.

Thereupon the Barber Company considered the advisability of constructing a railroad as an independent proposition by the sale of bonds and stocks upon the open market and applied to certain financial interests for the purpose of obtaining their assistance in this enterprise. Upon investigation, however, the same difficulty developed here. So long as this railroad was only capable of being used for a single purpose and was dependent for its income upon that one source it was said to be impossible to sell bonds or stocks for anything like the face value, and this scheme was also abandoned.

Being convinced of the advisability of using this mineral in its business, the Barber Company now determined to construct a railroad for itself, and did so. A charter was obtained, which was put in evidence in this proceeding, and the road was constructed under that charter and in the name of the railroad company, and it is now

operated entirely distinct from either the Barber Company or the Gilsón Company, but the Barber Company furnished the money for the construction, superintended that construction, and virtually owns and operates the railroad to-day.

This road extends, as already said, from a junction with the Denver & Rio Grande at Mack, Colo., to Dragon, Utah, a distance of 54 miles. It crosses a mountain range, the highest elevation being 7,500 feet above the sea, and 3,500 feet above Mack. The road runs for about 24 miles up a valley which is rough and unproductive, but which presents no serious obstacle to the building of a railroad, although the grades are heavy and the expense of construction, owing to numerous culverts, etc., was considerable. At the end of 27 miles this valley closes in and becomes a canyon and finally runs out altogether. The little station at the head of the valley where the serious climb begins is called Atchee, and the station on the other side at the foot of the mountain is known as Wendella. From Wendella to Dragon the character of the road is much the same as from Mack to Atchee, the distance being some 20 miles. From Atchee to Wendella is about 7 miles, and this portion of the construction was exceedingly difficult and its operation is unusually expensive. The road over this distance is one series of curves, the original curvature, as constructed, being in some instances 75 degrees. The ruling grade upon the north side of the mountain is 5 per cent, while upon the south side the heaviest grade is $7\frac{1}{2}$ per cent. This renders it necessary to haul trains between Atchee and Wendella by means of the Shay locomotive, which is an engine so constructed that the cylinders are vertical instead of horizontal.

The Uintah Railway Company owns four ordinary locomotive engines and two Shay locomotives. It has 1 passenger car, 3 water cars, and about 35 freight cars of various kinds. The country through which it runs is a desert. The character of the soil is alkali. The snows are sometimes heavy in winter, and severe rains also occur at times, so that the waters from the melting snow and the rains are difficult to control. The road is subject to both snow blockades and washouts, to landslides and rockslides. It is a narrow-gauge road, and it does not seem to have been practicable to construct or operate one of any other kind.

When the road was put into practical operation it was found that the rail as originally constructed for a part of the way where the grades were the heaviest was too light, and this portion was relaid with heavier steel. It was also found that the curves were too sharp, and at considerable expense the curvature was considerably reduced, so that at the present time the maximum curves are about 65 degrees.

13 I. C. C. Rep.

When this road was constructed there was practically no business in sight except the transportation of this gilsonite. Some few cattle and sheep were raised in that region, but the entire business from this source would be almost nothing. Going on from Dragon in a northerly direction to Vernal and Fort Du Chesne a much better, indeed an extremely fertile country is found. Wherever irrigation can be secured farming operations are already conducted in this section to a considerable extent, and when further irrigation is provided, as it undoubtedly will be in the future, those operations will be very much more extensive.

The supplies brought into this country and the commodities shipped out from it had, previous to the construction of the Uintah Railway, reached the Rio Grande Western at Price, Utah, the wagon haul from and to the interior point being from 80 to 90 miles. The Barber Company conceived the idea of extending at some time its railroad from Dragon to Vernal and Fort Du Chesne, and caused a survey to be made of a proposed line. It did not seem advisable to construct the railroad then, but the Barber Company did in the name of the Uintah Railway Company, and on its account, build an excellent wagon road to these points from Dragon, mainly upon the survey of the proposed railroad, and established between those points and Dragon a wagon service for the transportation of freight and passengers for the purpose of attracting business to its line of railroad between Dragon and Mack. The Uintah Railway Company now makes through rates from Vernal to outward destinations via Dragon over the Uintah Railroad and the Denver & Rio Grande, and it also makes rates via Mack and Dragon in the reverse direction upon freight which it transports from Dragon by wagon.

In this manner the Uintah Railway has managed to secure a considerable amount of freight in addition to gilsonite. During the year 1906 about 20 per cent of the entire traffic of this railroad was from other sources than gilsonite.

The Uintah Railroad was completed and opened for business in the latter part of the year 1904. Previous to that time, the complainant had been engaged in mining and selling gilsonite, its mines being at some distance from Dragon and its product being transported by wagon to Rifle, Colo. As soon as it learned that the Uintah Railway was to be constructed it realized that the Gilson Company would thereby acquire a cheaper means of transportation, which would give that company the command of the market and ruin the business of the complainant. Thereupon, and for this reason the complainant purchased its interest in the mines near Dragon which it is now working and began the operation of those mines, so that when the

Uintah Railway was ready for business the complainant was ready to commence the shipment of gilsonite over that railway.

The rate established by the defendant for the transportation of this commodity was from the first and still is 50 cents per 100 pounds or \$10 per ton. The cars are loaded at Dragon by the shipper, but are unloaded at Mack into the cars of the Denver & Rio Grande at the expense of the Uintah Railway or of the Denver & Rio Grande—it did not clearly appear which. It is possible to make a through shipment from Dragon to some eastern point by paying the sum of the rates from Dragon to Mack and from Mack to the eastern destination, without any expense of car transfer to the shipper.

The complainant insists that this rate is unreasonable, and alleges for that claim several reasons. It says first, that a rate of 50 cents per 100 pounds for hauling a commodity like gilsonite a distance of only 54 miles is inherently extortionate. It is undoubtedly true that gilsonite is, from a transportation standpoint, a low grade commodity. Its value is slight, not more than a few dollars a ton as it is placed upon the cars at Dragon and before its value has been increased by any transportation service. It is not liable to injury and it is not unusually bulky. It would be entitled under ordinary circumstances, if moved in considerable quantities, to the rate applying to low grade commodities like lumber, coal, etc. In point of fact, the rate of the Denver & Rio Grande from Mack to St. Louis, a distance of 1,313 miles, is only \$7.75 per ton.

We do not think, however, that this rate should be fixed by a comparison with rates generally. This road was constructed for the express purpose of bringing out this commodity and practically for no other purpose. While it is a railroad, and while it is our duty to treat it as a common carrier and to see that it gives to the complainant just and reasonable facilities for the transportation of its traffic, we can not assume that it must transport that traffic for the same price which would be applied upon a railroad constructed and operated for general purposes. We must consider the peculiar incidents which surround the movement of this particular traffic at this particular place.

The Barber Company, for its own purposes, has constructed this railroad. In order to do so, it has been obliged to proceed under a charter and to assume the position of a common carrier by rail. It extends from one State into another and is subject, therefore, to the jurisdiction of this Commission. But it would not be right to say that by reason of these facts alone the Barber Company has subjected itself to the burden of carrying the traffic of its competitor for less than the reasonable cost of the service. We can not determine

the reasonableness of this rate by a comparison with other railway rates established under normal conditions.

The complainant contends that in certain cases the Uintah Railway has applied a lower rate to the transportation of live stock and wool than it applies to the movement of gilsonite. This seems to be denied by the defendant. Without inquiring how the fact may be and assuming that it is as claimed by the complainant, we do not think that has any special bearing upon the reasonableness of the rate before us. Cattle can be driven to the railroad and sheep can be gotten to the shearing place in the same way, and this defendant could only obtain the business by naming a rate in competition with that drive.

The complainant also brings out the fact that upon merchandise traffic which the Uintah Railway handles from Mack to Dragon and which is taken from Dragon to Vernal and Fort Du Chesne by wagon, the railway receives for its part of the service 40 cents per 100 pounds when the traffic comes from the west, and 30 cents per 100 pounds on traffic coming from the east, and it insists that the defendant ought not to carry this merchandise traffic for a less rate than it applies to the transportation of gilsonite.

But we have seen that this traffic at Vernal and Fort Du Chesne is also competitive. The Uintah Railway Company can only obtain it by making such rate as will render it more desirable for the shipper to move this business via Mack and its railroad than via Price and the former route. The testimony of the defendant is that the highest rate which it can obtain is that which it does apply.

It should also be noticed that gilsonite moves from the north to the south, whereas this traffic moves from the south to the north, is, therefore, in the nature of a back haul, can be transported without practically any additional expense to the defendant and adds something to its revenues. If the defendant can obtain this merchandise traffic at the rate charged, it undoubtedly should do so in the exercise of good business judgment. To decline it would reduce the revenues of the road and necessitate, if it is to be allowed fair compensation for its service, the imposition of still higher rates than otherwise for the carriage of the gilsonite of the complainant.

We repeat that it is impossible to consider this railroad or the reasonableness of rates upon this railroad as we would if it were constructed in some thickly populated region where conditions applying to it were like those applying to other railways. When a railroad is chartered and constructed for general purposes, it impliedly undertakes to perform the service required of it by the public upon fair terms. If that railroad were not constructed by that company it

might be by some other company. It is a part of the business development of the section which it serves. This railroad is different. It is a one-industry proposition. It was built for the purpose of transporting this commodity principally and would never have been constructed but for that purpose.

The competitive relation of these parties to one another renders it especially important that we should fix a just compensation for the performance of this service for the complainant by the defendant. As we have already seen, the Uintah Railway Company and the Gilson Company are both owned by the same person. It is a matter of indifference to the General Asphalt Company, which owns both of these companies and obtains whatever profit either of them shows, whether that profit is made by the Gilson Company or by the railroad company, provided there is a profit in the end. The Uintah Railway Company may compel both the Gilson Company and the complainant to pay the same rate and still work against the complainant a most grievous and unjust discrimination.

This can be most clearly seen by a practical illustration. Let us assume that the actual cost to the defendant—and this should include every item of cost, like the providing of the railroad, with all its possible uncertainties either of advantage or disadvantage—of transporting gilsonite from Dragon to Mack is \$5 per ton. Now, if the defendant collects from both the Gilson Company and the complainant \$10 per ton for the transportation of this commodity, it makes that much profit upon the transaction and the General Asphalt Company is that much better off. If, under these circumstances the Gilson Company should sell gilsonite for \$5 per ton less than actual cost of production, treating the freight paid the defendant as a part of that cost, it would lose \$5 per ton by the transaction; but the Uintah Railway would make the same amount upon every ton handled by the Gilson Company and would also make \$5 per ton upon whatever was handled by the complainant. The General Asphalt Company would therefore profit as a result of that scheme of rates and prices. Hence if the defendant charges the complainant too high a rate it enables the Gilson Company to sell gilsonite at a price which must inevitably drive the complainant out of business altogether.

Upon the other hand, if the charge for transportation is less than the cost exactly the opposite result follows. The Uintah Railway Company loses upon what it transports both for the Gilson Company and for the complainant association, while the Gilson Company makes only upon its own tonnage, the total result being a loss to the General Asphalt Company. Hence if we establish too low a rate, we put into the hands of the complainant the means of destroying its competitor.

It may be said that if the General Asphalt Company has elected to take its franchise and construct this railroad it should assume the burden of the difficulties and uncertainties which this dual stock ownership creates; and this to an extent is true. But it must be remembered, upon the other hand, that the Barber Company made strenuous attempts to procure the construction of this line as an independent proposition and without giving to it its financial support, and only built the line itself as a last resort when its attempts to procure transportation facilities for this commodity by other means had failed. As a practical matter this industry could only be developed in this manner.

What, then, are the controlling considerations which determine the reasonableness of the rate upon this commodity over the railroad of this defendant?

It is often said that the rate depends upon the value of the service to the shipper, and it has been frequently claimed before this Commission that the cost of performing the service by the shipper himself might be taken as a measure of the rate to be charged by the carrier. It is seldom proper to measure the reasonableness of a freight charge by what it would cost the shipper to perform the service himself by other means; for railroads have become a part of a commercial and industrial whole, and must be reckoned as such in considering what may be properly charged for their services. But here the matter stands somewhat different. This railroad, over this desert mountain, has been built for a special purpose. It is not yet a part of any industrial development. It has been constructed to take the place of a wagon haul, and for nothing else. We may therefore inquire what it would cost the complainant were it obliged to transport this commodity between these points by wagon.

While the testimony upon this point is not satisfactory, it fairly appears that the expense of a wagon haul would materially exceed \$10 per ton, probably by from \$2 to \$3 per ton, and that the service would be much more unreliable, and in every way much less satisfactory than that offered by the defendant.

It is doubtful, however, if this fact ought to have much weight in determining the question before us. In our opinion, we should be mainly guided by the cost of the service to the defendant. We should determine the fair value of this property and allow the defendant to impose such a charge for the carriage of gilsonite as will fairly compensate it for the outlay. In the present instance, fortunately, it is possible to reach a satisfactory conclusion touching the money value of this investment.

As already stated, while this railroad was built by the Uintah Railway Company its construction was directed and the means therefor

were provided by the Barber Asphalt Paving Company. The president of that company introduced a statement showing in detail the original cost of construction and testified that the sums there set down represented in all cases actual payments of cash. He further said that the contracts under which they were paid did not involve any construction company in which any person connected with either the Barber Company or the Railway Company was interested; that these contracts were let by the Barber Company, which was financially responsible and which guaranteed the payment, upon the lowest cash figure, and that the railroad, in short, was constructed upon the best terms possible to a party possessing ample financial resources. This statement shows that the original cost of the road, not including buildings and equipment, was, in round numbers, \$510,000.

Among the items making up this total is one for legal expenses of \$11,000 and one for general expenses and incidentals of \$31,000, both of which would seem to be abnormally large. Upon the other hand, there is no item for interest which might properly appear.

When the railroad was put into actual service it turned out that certain improvements and additions must be made, the cost of which was \$47,000. The cost of the equipment, given in detail, was \$88,000.

The defendant also puts down an item of \$63,000 for buildings. These buildings include an office at Mack, a boarding house at Dragon, and certain cottages in which the employees are housed, about the propriety of which there can be no question. It also includes hotel at Mack, \$17,000; hotel at Dragon, \$18,000; and furnishings, \$9,000. The complainant insists that the items for these two hotels and their furnishings ought not to be included as a part of the cost of the railway.

The defendant relies upon several authorities, especially *Jacksonville, etc., Railroad Company v. Hooper*, 160 U. S., 414, to show that a railroad, without any special authorization in its charter, may own and operate a hotel.

Without attempting to pass upon the question of *ultra vires* which is involved, we think that these hotels and their furnishings may properly be included in the cost of this property. A considerable amount of revenue is derived by this company from its passenger service and it must be evident that no passenger business could be done in this desert country without the provision of some means of caring for passengers at the hands of this railroad. The testimony as to the profitableness of these hotels is extremely indefinite, but it seems to us on the whole that their construction has probably added to the net profit of the transaction and that therefore they ought to

be fairly included in the cost of the property in determining what rate shall be paid by the complainant.

These items make up in gross something over \$700,000, and there can be very little doubt that this figure just about represents the actual cost in cash of this railway and its equipment, including these two hotels.

As already stated, the original design of the Barber Company was to extend this railroad to Vernal and Fort Du Chesne and the line was surveyed out to those points. It was not deemed wise to construct the railroad beyond Dragon, but the company did build a good wagon road, for the use of which, under the laws of Utah, they are permitted to charge toll. They have also put upon this road a wagon and a stage service for the purpose of transporting passengers and commodities between Vernal and Fort Du Chesne upon the north and Dragon upon the south. The cost of this wagon road, together with the freighting and staging outfit and the various buildings connected with it, aggregates about \$100,000, and the defendant claims that this also should be added to the cost of its property in determining a fair return to the defendant.

The complainant insists that the defendant had no legal right to construct this wagon road; that this Commission has no jurisdiction over the rate which it charges beyond Dragon for service by its stage coaches and freighting teams, and that this property must be entirely ignored.

There is nothing in the charter of the Uintah Railway Company, a copy of which was introduced in testimony, which authorizes that company to construct or to operate this toll road and these stage lines. Whether in constructing and operating this part of its property the defendant is or is not within its charter power, does not appear to be a question upon which this Commission must necessarily pass in order to determine the reasonableness of this rate. It will be seen when we examine the sources of revenue of the defendant that a considerable amount is for the transportation of commodities and persons between Mack and Dragon which come from or go on to Fort Du Chesne and Vernal and would not be handled by the railroad unless some provision was made for transporting them beyond Dragon. It will further appear that the operation of this freight line and stage line has been conducted in the past at a very material loss.

Now, whether or not the railroad company has a strict legal right to embark in this staging enterprise, it seems to us that it would be unjust to give the complainant the benefit of the revenue which is derived from this source without asking it to bear any portion of

the loss which seems to be necessarily attendant upon providing the freight from which that revenue comes. Upon the contrary, even if the defendant has the legal right to construct this road and to operate these teams, we very much doubt whether, if the result be a net loss, this complainant ought to be charged with this poor business management upon the part of the defendant. The enterprise is so far beyond the legitimate scope of constructing and operating a railroad for the main purpose of bringing out this gilsonite that if the defendant insists that its rate should be adjusted upon the theory that its road is constructed mainly for that purpose, it can not further claim that the complainant must sustain the burden of its poor management in undertaking this side issue. The most just way, apparently, is to eliminate so far as possible the wagon road and everything connected with it; and this can be done with reasonable accuracy.

The defendant insists that there should be added to the \$700,000 which we have found to be the fair cost of this property an item due to what would have been the enhanced cost of reproducing the road at the time of the hearing. Supplies of all kinds and labor had advanced between 1904, when the railroad was built, and the spring of 1907, when the testimony was given. The defendant attempted to prove that to have constructed the property in 1907 would have cost \$150,000 more than it actually did cost to construct it in 1904, and claimed that this amount should be added to the original cost.

The Supreme Court of the United States has declared that one of the elements which determine the true value of a railroad upon which it may earn a return is the cost of reproduction. It can not be said, therefore, that the cost of reproducing this property at the time of the hearing was immaterial. We do not feel, however, that much weight can be ascribed in the present case to this factor. The price of everything going into the construction of this property was higher when this testimony was given in October, 1907, than it had been for many years; higher than to-day. The cost of construction at the time it was constructed is undoubtedly above the average for the last dozen years, and probably as great as a fair average for some years to come. This being so, we feel that the money actually invested in this property affords the most satisfactory although not the only means of determining the value upon which a return may be legitimately claimed. That cost, as previously said, is substantially \$700,000, or something less than \$15,000 per mile, which certainly can hardly be regarded as an extravagant valuation for the building and equipment of this property, including its hotels.

We now inquire what the earnings of this property have been upon the basis of the rates charged.

The first statement furnished is for the year 1905, and shows total earnings of \$156,000 and total expenses of \$154,000. The earnings of the stage line are not separated from those of the railroad for this year, nor are the expenses given separately under that name. There does, however, appear among the earnings an item termed "Miscellaneous" for \$28,000, and among the operating expenses a corresponding item amounting to \$61,000. It seems probable that these items fairly well represent the earnings from the stage line and the cost of operating that line. Deducting the two, we should have \$128,000 for gross earnings and \$92,000 for operating expenses, leaving a net income of \$35,000.

A certain portion of the \$128,000 above stated as the gross earnings of the company is from freight and passengers, which would not have been carried by the Uintah Railway but for the operation of these stage lines, and, in accordance with what has been already said, the earnings from this traffic should be deducted. There is no way, however, for this year in which the amount of such earnings can be even approximately determined, and it is evident that without any such deduction the net earnings shown do not yield an excessive return upon the value of the property used.

The next statement of earnings and expenses is for the twelve months ending January 31, 1907. Just why the fiscal year of this company has been made to end on the 31st of January does not appear; but its books have been kept in this manner, and statements are therefore furnished for this period. In this statement the earnings and expenses of the railway are kept separately and are given below:

For twelve months ending January 31, 1907.

Gross earnings, railway division:

Freight -----	\$157, 440. 28
Passenger -----	11, 089. 99
Express -----	813. 24
Mails -----	2, 969. 97
Telegraph -----	1, 847. 41
Telephone -----	295. 70
Hotels -----	680. 50
Real estate -----	2, 059. 67
Miscellaneous -----	555. 72
Total earnings -----	177, 742. 46

Operating expenses, railway division:

Maintenance of way and structure	\$36,793.92
Maintenance of equipment	16,106.98
Conducting transportation	38,102.33
General expenses	29,122.11
Total expenses	120,125.34
Net earnings	57,617.12

During this same period earnings from wagon operations were \$47,000 and expenses \$90,000, leaving a deficit of \$43,000.

The defendant furnished an exhibit showing the different commodities carried both north and south upon the Uintah Railway for the above twelve months and the amount of revenue derived from each commodity. An examination of this statement enables us to say with some confidence what portion of the freight earnings above specified were due to the wagon road. Without attempting to give the reasons in detail for the conclusion we are of the opinion that probably \$20,000 of those earnings arose from traffic which would not have been obtained by the Uintah Railway but for the teaming operations of that company. We think, therefore, that \$20,000 ought to be deducted from the total on that account, leaving a total of gross earnings at \$157,742.46.

The complainant insists that the item of general expenses contained in the above statement is too large, and from the testimony given upon the trial and from an examination of the general expenses in other years, we are inclined to think that this position is well taken and that the amount of these expenses ought to be reduced at least \$10,000, making the operating expenses \$110,125.34 and leaving net earnings at \$47,617.12.

This would yield a net income of about 7 per cent on what we regard as the fair money value of that property. It can hardly be claimed that such a return is excessive. While the Barber Company with its strong financial position could undoubtedly furnish that money for considerably less than 7 per cent, there are elements of uncertainty in the investment which would fairly entitle that company to at least this return. Possibly it might afford to take the chance of a rate upon gilsonite for the present which would yield to it a less return provided it was given the benefit of whatever advantage might accrue from a subsequent increase in the quantity of gilsonite shipped. But upon the theory upon which we are testing the reasonableness of this rate if shipments of gilsonite should materially increase there would be an increase of gross revenues without a corresponding increase of operating expenses, and we should feel compelled, for that reason, to reduce the rate on that commodity.

The last statement is of earnings and expenses for the eight months from February 1 to September 30, 1907, and is as follows:

For eight months ending September 30, 1907

Gross earnings, railway division:

Freight	\$175, 951. 45
Passenger	8, 766. 96
Express	620. 00
Mails	2, 312. 24
Telegraph	823. 55
Telephone	285. 08
Real estate.....	1, 618. 60
Miscellaneous	94. 15
Total earnings.....	<u>190, 472. 03</u>

Operating expenses, railway division:

Maintenance of way and structures.....	25, 013. 47
Maintenance of equipment.....	15, 729. 10
Traffic	440. 15
Conducting transportation.....	27, 726. 29
General expenses.....	9, 733. 77
Total expenses.....	<u>78, 642. 78</u>
Net earnings	<u>111, 829. 25</u>

During the same period earnings from wagon operations were \$35,000 and expenses \$50,000, a deficit of \$15,000.

We have also a statement covering the same months showing the commodities shipped and the revenues therefrom. It seems probable from an examination of this statement that the total earnings for these eight months should be diminished by \$20,000 on account of traffic which would not have come to the Uintah Railway but for the operation of its stage and wagon lines. We also think that since this traffic, especially the freight traffic, is handled without appreciable additional expense to defendant, these operating expenses ought not to be diminished on this account; in other words, that its net earnings should be decreased by \$20,000, making them for the eight months \$91,829.25.

During these eight months the defendant transported 14,738 tons of gilsonite, from which it derived a revenue of \$147,380, at \$10 per ton. Had this been carried at \$8 per ton the net revenue of the company would have been further reduced by \$29,476, leaving a net income for the eight months of \$62,353.25. It will be seen, therefore, that had the rate applied to the transportation of gilsonite been \$8 per ton the net earnings of the defendant for these eight months would have been as great as we think they should be for the entire twelve months.

The defendant contends that the period covered was one of unusual commercial prosperity and activity and that similar results can not be expected through a series of years. It seems probable, however, that the operation of this property was extravagant during the first two years; that it is now upon an economical operating basis, and that if the uses to which gilsonite is put continue to be as numerous as they are—and there is every probability that they will increase—this road ought to be able to earn upon a basis of \$8 per ton a fair return upon the property invested. Everything must depend upon the quantity of gilsonite which is transported. At present practically the entire supply of this mineral goes out over the Uintah Railway. Should its use be materially curtailed or should some other source of supply be discovered, or some other avenue of transportation be provided, it would at once change the basis upon which our conclusion is founded and therefore require a reconsideration of the conclusion itself.

Since the preparation of the foregoing report we have received a communication from the attorneys for the defendant stating that during the last few months shipments of gilsonite have declined from 25 to 30 per cent, and further stating that a recent explosion and fire in the mine of the Gilson Company at Dragon will virtually suspend shipments of that company for some time to come. While we have not seen fit to change the conclusion reached, these facts do confirm the impression that, in view of the many uncertainties surrounding the operation of this property, the rate above established is not excessive.

The complainant claimed damages by reason of the exaction of this \$10 rate and also for other alleged violations of the act to regulate commerce. No evidence was submitted upon the trial tending to show any damage to the complainant by reason of the other infractions of the act which he alleged, and the Commission is of the opinion that no reparation should be allowed under the circumstances of this case on account of excessive freight charges.

An order will issue directing the Uintah Railway Company to establish and maintain for two years a rate of \$8 per ton for the transportation of gilsonite from Dragon to Mack.

No. 933.

IN THE MATTER OF RATES, PRACTICES, ACCOUNTS, AND
REVENUES OF CARRIERS SUBJECT TO THE ACT TO
REGULATE COMMERCE.

March 9, 1908.

Practices of certain carriers and certain shippers relative to interstate shipments declared to be illegal, and criminal prosecutions requested to be instituted

John H. Marble for the Commission.

Henry T. Wickham for the Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

A hearing in the above matter was held in the city of Richmond, Va., on the 19th, 20th, and 21st days of February, 1908, both oral and documentary evidence being received. From such evidence the following facts appear:

(1) For some years a fraudulent practice, participated in by certain dealers in grain and also by certain dealers in packing-house products and also by the Chesapeake & Ohio Railway Company, has obtained at Richmond, by means of which this railway company has favored such shippers at the expense of the Seaboard Air Line and Atlantic Coast Line, its southern connections. This practice has resulted in the obtaining for such shippers of rates less than local rates over the Seaboard Air Line and Atlantic Coast Line for shipments of grain and also for shipments of packing-house products, which local rates such shipments were legally bound to pay. This result has been accomplished by means of transfer slips issued by the station agent of the Chesapeake & Ohio Railway Company on the written instruction of the assistant general freight agent of this railway company, said transfer slips falsely conveying to the southern lines the statement that such shipments had originated at points beyond Richmond and were entitled to move from Richmond to destination in the Carolinas at a division of a through rate, such division being less in amount than the local rates to which these shipments were legally subject.

(2) The benefits of this arrangement have been reaped by the shippers enjoying it and also by the Chesapeake & Ohio Railway Company, which, whether by express agreement or not, has received all of the inbound business of the shippers so favored by it.

(3) It also further appears that the assistant general freight agent of the Chesapeake & Ohio Railway Company, responsible for the above-described abuse, upon discovering that the same was under investigation by special agents of this Commission, undertook to make amends for the same to the Seaboard Air Line and the Atlantic Coast Line. To this end he ordered that a list be prepared of all cars which had, by his orders, been moved at a division of the joint through rate less in amount than the local rates to which they were legally subject. Being informed by one of his subordinates that this list would be a very long one, he then gave orders that the list should only show the cars moving during the months of August, September, and October, 1907. Having been furnished with a list covering these three months, he forwarded it to the southern lines with a statement that it showed "all" cars so misbilled which he had been able to discover.

(4) It also appears that certain records of the Chesapeake & Ohio Railway Company have been destroyed, contrary to the provisions of the act to regulate commerce. The testimony showed that the freight claim department of this railway is under the charge of the assistant general freight agent, he being the official responsible for the false transfer slips above referred to. The testimony further shows that the auditor of disbursements, on receiving from the freight claim office claims from shippers with direction that they be paid, inquires no further into the merits or legality of such claims than to ascertain from the auditor of freight receipts that the shipments to which the claims relate have moved and that the charges have been collected. All claims so passing through the freight claim office and paid upon the order of the assistant general freight agent prior to January 1, 1907, were destroyed during the latter part of the year 1907. This destruction appears to have been made by the auditor of disbursements under authorization of the comptroller of the Chesapeake & Ohio Railway Company.

So far as the matters disclosed are criminal in their nature, they will be referred to the United States district attorney at Richmond, with the request that prosecution be instituted against all parties therein involved.

No. 1113.
A. T. HAINES

v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

No. 1155.
F. J. GENTRY
v.
CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COM-
PANY ET AL.

No. 1114.
KINGFISHER MILL & ELE-
VATOR COMPANY
v.
SAME.

No. 1115.
OKLAHOMA MILL COMPANY
v.
SAME.

No. 1116.
SCHOWALTER & COMPANY
v.
SAME.

No. 1157.
J. T. GIST

v.
SAME.

No. 1153.
ENID ICE & FUEL COMPANY

v.
CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COM-
PANY.

No. 1154.
SAME
v.
FORT SMITH & WESTERN
RAILROAD COMPANY
ET AL.

No. 1158.
W. B. JOHNSTON
v.
CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COM-
PANY.

Submitted January 2, 1908. Decided March 9, 1908.

1. This Commission is the creature of statute, and its authority is derived from the act of Congress creating the Commission and the various amendments. Its function is to administer the act to regulate commerce and not to enforce conditions found in Federal or other charters. While a violation of the conditions of the acts of Congress granting the rights of way may be grounds for forfeiture, the remedy is in the courts, as it is not the province of this Commission to enforce compliance with conditions subsequent found in railroad charters.

2. Since the admission of Oklahoma as a state the Commission is without power to fix rates to be observed in the future within the present limits of that state.
3. Rates between points within the present limits of the state of Oklahoma held not unreasonable at the time shipments in question moved.
4. The present rate of \$1.85 per ton on shipments of slack coal from Weir and Midway, Kans., to Goltry, Okla., is unreasonable and should not exceed \$1.50 per ton.
5. Rates between other points outside the present state of Oklahoma and points within that state held not unreasonable.

West, Scott & Otjen, F. G. Walling, and F. L. Boynton for complainants.

E. B. Peirce and M. L. Bell for defendants.

No. 1113.

A. T. HAINES

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
AND CHOCTAW, OKLAHOMA & GULF RAILROAD COM-
PANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complaint, filed June 25, 1907, is by a retail coal dealer located at Kingfisher, Okla., and is that the rates from Hartford and Huntington, Ark., and Dow, Haileyville, Wilburton, Alderson, South McAlester, and Prairie Creek, Okla., (formerly Indian Territory) to Kingfisher, Okla., are excessive, and reparation is claimed on account of coal transported in the past.

The rates are challenged, (1) upon the ground that the Chicago, Rock Island & Pacific and the Choctaw, Oklahoma & Gulf (now a part of the Rock Island system) are limited in their charges by virtue of condition in the acts of Congress granting them rights of way through Indian Territory that the rates to be charged shall not be higher than the rates charged in Kansas, Arkansas, and Texas, and (2) that they are unreasonable and unjust.

Huntington, Ark., one of the points from which rates are questioned, is located on the lines of the St. Louis & San Francisco Railroad Company and it not having been made a party defendant, no order can be entered as to the rate from that point.

Dow, Haileyville, Wilburton, Alderson, South McAlester, and Prairie Creek are all within the present state of Oklahoma and the questions presented for determination as to rates between these points and Kingfisher are:

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(1) Are the rates between these points determined and limited by the provisions of the several acts of Congress granting rights of way to the defendants, wherein it is provided that the rates in Indian Territory shall not be higher than are charged in Kansas, Arkansas, and Texas.

(2) If not so determined and limited, has the Commission authority (a) to determine what shall be the rate for the future and (b) to award reparation because of unreasonable charges collected on past shipments.

(1) The Interstate Commerce Commission is a creature of statute, and its authority is derived from the act of Congress creating the Commission and the various amendments thereto. Its function is to administer the act to regulate commerce; not to enforce conditions found in Federal or other charters. And while a violation of the conditions of the acts of Congress granting the rights of way may be ground for forfeiture, the remedy would be through the courts.

Moreover, the indefinite language of the legislation makes it impracticable to give application to its provisions. What certainty, for instance, is there in the provision that rates shall not be greater than are charged in three other state jurisdictions, when each of those states has a commission with authority to fix rates? Naturally, in the proper performance of their duties, these several commissions take into consideration in fixing rates on special commodities peculiar conditions incident to the transportation of the several commodities within their respective states. This statement makes it evident that the several standards could not be made the measure of rates in Oklahoma. Applying it to the particular case here under consideration, Kansas, Arkansas, and Texas have rates which are different for the transportation of coal for equal distances, and each of these commissions changes the rates within its jurisdiction whenever, in its judgment, the public interest requires.

Again, the two rights of way here concerned were granted to separate and distinct corporations. In granting one right of way Congress provided that the rates should not be higher than prevailed in Kansas. In granting the other right of way it provided that the rates should not be higher than in Arkansas "and" Texas. Since the passage of these acts, the two carriers have become consolidated into one system and are operated as a unit. In some of the instances complained of rates are made over the lines of what were formerly two carriers, but now one. Should it be held that the acts of Congress were to determine the rate, which would be the standard adopted—the Kansas, the Arkansas, or the Texas rate? And, if either were selected, could the rate in that state be applied over what was formerly two carriers?

These are only a few of the insurmountable difficulties which would render it impracticable to give effect to the conditions under the acts of Congress referred to, even were we to hold that the provisions in such special acts conferred jurisdiction on this Commission, a position legally untenable. The only measure of the power of this Commission is found in the act to regulate commerce, as amended.

(2) Under the plain provisions of the act to regulate commerce there can be no contention that this Commission may fix rates to be charged by carriers in the future within the limits of the present state of Oklahoma. Therefore the only question left for consideration as to the shipments which were made between the points here under consideration is whether Oklahoma and Indian territories, having united and become the state of Oklahoma on November 16, 1907, the Commission has authority to grant reparation if it is of opinion that the rates charged on shipments made prior to the formation of the state were unreasonable at the time of such shipments.

While there is perhaps reason for doubt as to the jurisdiction of the Commission under such circumstances to make an order of reparation, we will herein, without deciding this question, determine this case upon the facts presented.

All the shipments which form the basis for the claim of reparation were made prior to April 3, 1907. On that date this Commission delivered an opinion in the case of *Johnston v. St. Louis & San Francisco Railroad Co. et al.*, 12 I. C. C. Rep., 73, involving rates on coal from practically the same producing territory to Enid, a point within a few miles of Kingfisher, the destination of the coal here complained of. In that case the Commission, after a full consideration of all the testimony presented and a full investigation from all sources, held that reparation should not be granted, and an order was entered dismissing the complaint as to that feature. The complaint now being considered was filed within ninety days of the delivering of the opinion in the Johnston case, claiming reparation during a period covered by that case.

While it is true that the specific points of origin and the specific points of delivery in the present case are different from such points in the Johnston case, yet it is a fact that the traffic originates in the same general producing district and the point of delivery is only a few miles distant. Under such circumstances, the Commission having deliberately expressed its opinion in the matter of reparation on coal shipments, it was incumbent upon the complainant to show clearly either that the Commission was in error as to its finding in the Johnston case or that the circumstances and conditions relating to the shipment of coal between the specific points mentioned in this complaint were so different and dissimilar from the conditions between the points in the

Johnston case that the Commission would be justified in reaching a different conclusion in the matter of reparation.

In this regard the complainant has wholly failed. No evidence was presented other than general statements that rates were different in other sections of the United States from those which obtained between the points complained of; nor was any effort made to distinguish conditions between points named in the complaint and points named in the Johnston case. Hence the Commission can do nothing further than follow the opinion therein expressed and decline to grant reparation on all the shipments between points within the present state of Oklahoma.

The only other questions left for consideration are: *first*, Is the rate on coal from Hartford, Ark., to Kingfisher, Okla., unreasonable and unjust; and if so, what should be the rate for the future? *second*, Is the complainant entitled to reparation on shipments made in the past?

From Hartford to Kingfisher the distance is 257 miles. The rate on lump coal on June 25, 1907, now in effect, was \$1.70, and on slack coal \$1.50; the rate per ton per mile on the former being 0.67 of a cent and on the latter 0.59. In the Johnston case, above referred to, the Commission fixed the rates for a distance of 239 miles at \$1.95 for lump, being 0.72 of a cent per ton per mile, and \$1.35 for slack, being 0.61 of a cent per ton per mile, and practically the same rate per ton per mile for the 290-mile haul. These rates were fixed by the Commission after a full and careful consideration of the conditions in that section of the country, and the order of the Commission fixing these rates for two years has been complied with by the defendant carriers. These rates thus prescribed by the Commission, as will be seen, are higher per ton per mile than the rates now in effect between the points here complained of. In the absence of any showing that the circumstances and conditions are dissimilar in the two cases or that the Commission was in error in the Johnston case, we are of opinion that no reduction should be made at this time in the rates between the points complained of. The tariffs on file in the Commission show that rates on lump coal have been decreased 40 per cent during the last five years.

All that has been said in this case concerning the ground for the refusal to grant reparation on shipments between points within the present state of Oklahoma is applicable to the interstate shipments from Hartford, and for these reasons reparation is denied.

An order will be entered in accordance with the views herein expressed.

No. 1155.

F. J. GENTRY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
AND ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complaint was filed on June 28, 1907, by a retail coal dealer located at Pond Creek, Okla.

Complaint is made of the rates on coal from Weir, Wichita, and Midway, Kans., and Dow, Lowe, Gowan, Alderson, Holdenville, Wilburton, and Haileyville, Okla., (formerly Indian Territory) to Goltry, Okla., and reparation is claimed.

The questions involved as to the shipments between the points in Oklahoma are the same as those in the case of *Haines v. C., R. I. & P. Ry. Co. et al. supra*, and as to Oklahoma points reference is made to that opinion for the reasons for disallowing such claims.

The only other questions left for decision are, first, is the rate on coal from Weir, Wichita, and Midway, Kans., to Goltry, Okla., unreasonable and unjust; and if so, what should be the rate for the future? Second, is complainant entitled to reparation?

No evidence was offered by complainant tending to show that these rates were unreasonable or unjust, other than the reference to the rates in other sections of the United States, with no explanation of the conditions incident to the movement of coal in those sections. An examination of the tariffs on file shows that the average distance of Goltry, Okla., from the group of mines in Kansas, in which are included Midway and Weir (no rates being quoted from Wichita, because no coal is shipped from that point, although complaint is made of it), is 268.9 miles; that the rates in effect from those mines to Goltry, Okla., on April 21, 1904, were, on lump coal, \$2.50, and slack \$2 per ton, making 0.92 and 0.74 of a cent per ton per mile; that the rates in effect June 28, 1907 (which are the present rates), between the same points are \$1.85 on both lump and slack coal, making 0.68 of a cent per ton per mile.

While the Commission is of opinion that the rates on lump coal from the points named above to Goltry, Okla., should not be held to be unreasonable at this time, yet it thinks the rate on slack coal should be somewhat lower than that on lump and is therefore of the opinion that the rate on the former between the points in controversy, except

from Wichita, should be not higher than \$1.50 per ton. Reparation will not be granted on account of past shipments.

An order will be entered in accordance with the views herein expressed.

No. 1114.

KINGFISHER MILL & ELEVATOR COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
AND CHOCTAW, OKLAHOMA & GULF RAILROAD COM-
PANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complaint was filed on June 25, 1907, and is by a corporation engaged in operating a mill and elevator at Kingfisher, Okla., which ships mill products and grain out of Kingfisher over defendants' lines and coal and slack over said lines into said city.

This case involves the question of rates on coal from Hartford and Huntington, Ark., and Dow, Haileyville, Wilburton, Alderson, South McAlester, Prairie Creek, Craig, Howe, Bonanza, Hackett, and Henryetta, Ind. T., (now Oklahoma) to Kingfisher, Okla. It also involves what is termed the milling-in-transit rate into and out of Kingfisher from points along the line of the Chicago, Rock Island & Pacific and other roads.

So far as the shipments of coal are concerned, the same questions are involved as in the case of *Haines v. C., R. I. & P. Ry. Co. et al.*, *supra*, and for the reasons therein stated are likewise disposed of.

So far as the complaint relates to the milling-in-transit of grain, it involves on grain rates from many stations on the Chicago, Rock Island & Pacific Railway in Kansas and Oklahoma, into Kingfisher, and the rate out to points along the lines of the same railway. The complaint itself does not name the stations between which rates complained of are in effect, but it is in the following general language:

That during all the times hereinafter mentioned, the respondent, the Chicago, Rock Island & Pacific Railway Company, has received for carriage from complainant at the various points of origin and carried to the points of destination, upon the dates, the quantities of merchandise either direct or milling-in-transit routing, shown by complainant's schedule hereto attached marked "Exhibit B," and made a part hereof which is true and correct in every particular, and shows the date of such transaction, the car number, and initial, the weight, rate of freight paid, the highest legal rate

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which might legally have been demanded under said laws (had the same not been unreasonable rates), the overcharge, the points of origin and destination, and such other particulars as fully show the nature of the transaction had, and the amount of overcharge exacted, "Flat" in exhibit meaning "Kingfisher."

An examination of that exhibit, which is simply a statement presumably drawn from the waybills and expense bills of particular shipments, shows that out of 360 shipments, 200 originated at Kingfisher, which, of course, can have no relation to a milling-in-transit practice and as the complaint is solely as to that practice, these 200 shipments have no relation to the matter in controversy.

Out of the 160 remaining shipments 127 are between points in the State of Oklahoma and 33 are interstate shipments; but of these latter all but 12 are for less than 24,000 pounds, the minimum carload having the privilege of milling-in-transit rates; and of the 127 intra-state shipments only 33 were over the carload minimum.

In this case depositions were taken at Kingfisher and a hearing had at Enid, and at neither place was the subject of milling-in-transit on grain referred to, and not a word of testimony was offered thereon. In the elaborate brief filed by the complainant the only reference to the subject is in the following language concerning proposed findings of the Commission:

That the rates on mill stuff shipped over the defendant's lines beyond the limits of Oklahoma over the original Choctaw road be placed upon the Arkansas distance tariff rates and reparation as prayed be awarded to the Kingfisher Mill & Elevator Company as exhibited in its second schedule (Exhibit B).

We can not but regard the position taken by the complainant as an entire abandonment of its complaint so far as milling-in-transit of grain is concerned, except, perhaps, in so far as these rates are affected by the provisions of the Choctaw franchise as to which reference is made in the Haines case.

The complaint will be dismissed.

No. 1115.

OKLAHOMA MILL COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
AND CHOCTAW, OKLAHOMA & GULF RAILROAD COM-
PANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*.

This complaint was filed on June 25, 1907, and is by a corporation operating a mill and several elevators located at Kingfisher, Okla.

The complaint is as to rates on coal from Hartford and Huntington, Ark., and Dow, Haileyville, Wilburton, Alderson, South McAles-

ter, and Prairie Creek, Okla., (formerly Indian Territory) to Kingfisher, Okla.

This case is in all respects the same as that of *Haines v. C., R. I. & P. Ry. Co. et al.*, *supra*, and for the reasons therein stated the complaint will be dismissed.

No. 1116.

A. H. SCHOWALTER & COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
AND CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint was filed June 25, 1907, and is by a firm engaged in the business of selling coal at retail in Kingfisher, Okla.

The complaint is as to rates on coal from Weir City, Kans., and Dow, Haileyville, Wilburton, Alderson, South McAlester, Prairie Creek, and Hartshorn, Okla., (formerly Indian Territory) to Dover and Kingfisher, Okla.

This case is in all respects the same as that of *Gentry v. C., R. I. & P. Ry. Co. et al.*, *supra*, except that the points of delivery are different and the St. Louis & San Francisco Railroad Company is not a party defendant here. Weir City, Kans., one of the points involved in this case, is on the St. Louis & San Francisco Railroad and not on either of defendants' lines. For this reason no order can be entered as to rates on coal from that point.

The other rates involved are those from the Oklahoma (Indian Territory) coal fields to Dover and Kingfisher, in the same State, and the conditions in this case being substantially the same as in the cases of *Gentry v. C., R. I. & P. Ry. Co. et al.*, and *Haines v. C., R. I. & P. Ry. Co. et al.*, *supra*, the complaint will be dismissed for the reasons set forth in those opinions.

No. 1157.

J. T. GIST

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
AND CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint was filed June 28, 1907, by a retail dealer in coal at Enid, Okla. The rates involved are those from Alderson, Wilburton, Haileyville, Henryetta, Dow, Craig, Gowan, Baker, Krebs,

and McAlester, Okla., to Enid, Okla. The rates involved are only those between points within the state of Oklahoma.

The questions in the case for decision are, (a) whether the acts of Congress granting a right of way to the defendant upon the condition that the rates charged shall not be higher than those in adjoining states give jurisdiction to the Interstate Commerce Commission to enforce said acts, and (b) whether the complainant is entitled to reparation on account of past shipments.

For the reasons stated in the case of *Haines v. C., R. I. & P. Ry. Co. et al.*, *supra*, where the same questions are involved, the complaint will be dismissed.

No. 1153.

ENID ICE & FUEL COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This case was filed June 28, 1907, and is by a corporation engaged in the selling of coal at retail at Enid, Okla. The rates complained of are those on coal in carloads from Dawson, Haileyville, Red Oak, Hughes, and Alderson, Okla., to Enid, Okla. The rates here involved are only those between points within the state of Oklahoma.

The questions in the case for decision are, (a) whether the acts of Congress granting a right of way to the defendant upon the condition that the rates charged shall not be higher than those in adjoining states give jurisdiction to the Interstate Commerce Commission to enforce said acts, and (b) whether the complainant is entitled to reparation.

For the reasons stated in the case of *Haines v. C., R. I. & P. Ry. Co. et al.*, *supra*, where the same questions are involved, the complaint will be dismissed.

No. 1154.

ENID ICE & FUEL COMPANY

v.

FORT SMITH & WESTERN RAILROAD COMPANY AND
DENVER, ENID & GULF RAILWAY COMPANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint was filed June 28, 1907, and is by a corporation engaged in selling coal at retail at Enid, Okla. The rates complained of are from McCurtain, Okla., (formerly Indian Territory) to Enid,
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Okla. The sole question involved is whether the complainant is entitled to reparation on account of shipments made prior to November 16, 1907, the date when Oklahoma became a state, between points which are now within the boundaries of said state.

For the reasons set forth in the case of *Haines v. C. R. I. & P. Ry. Co. et al.*, *supra*, the complaint will be dismissed.

No. 1158.

W. B. JOHNSTON

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint was filed June 28, 1907, by a retail coal dealer at Enid, Okla. The rates involved are those on coal between Alderson, Haileyville, Craig, Wilburton, Hughes, Dow, McAlester, Baker, Lehigh, Edwards, and Henryetta, all in the Indian Territory (now Oklahoma), and Enid and Hitchcock, Okla. The rates here involved are only those between points within the state of Oklahoma.

The questions in the case for decision are (a) whether the acts of Congress granting a right of way to the defendant upon the condition that the rates charged shall not be higher than those in adjoining states give jurisdiction to the Interstate Commerce Commission to enforce said acts, and (b) whether the complainant is entitled to reparation.

For the reasons stated in the case of *Haines v. C. R. I. & P. Ry. Co. et al.*, *supra*, where the same questions are involved, the complaint will be dismissed.

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No. 889.

MERCHANTS TRAFFIC ASSOCIATION

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; PENNSYLVANIA COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; MICHIGAN CENTRAL RAILROAD COMPANY; ERIE RAILROAD COMPANY; CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; DENVER & RIO GRANDE RAILROAD COMPANY; RIO GRANDE WESTERN RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; UNION PACIFIC RAILROAD COMPANY, AND WABASH RAILROAD COMPANY.

Submitted June 25, 1907. Decided March 13, 1908.

1. Complaint alleges that the all-rail rate on cotton piece goods from New England points to Denver, Colo., of \$1.79 per 100 pounds, in any quantity, is unreasonable, and prays that Denver be accorded a carload rate on such cotton fabrics; *Held*, upon consideration of the testimony and argument, that the application for a carload rating be denied, but that the \$1.79 rate is excessive and should not exceed \$1.50. As no order can properly be made upon this record, complaint dismissed.
 2. This rate to Denver is not a joint through rate, but is made up of the local rate from New England to St. Louis plus the rate from St. Louis to Denver, or in some cases from St. Louis to Kansas City and from Kansas City to Denver. The Commission might perhaps order a reduction of these several locals to
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such an extent as to bring the entire rate within the figure named; but the Commission would be passing upon a through rate from New England to Denver and no such rate is now in existence. The proper method to follow in cases like this, where no joint rate exists, is to cite before the Commission the proper defendants and pray for the establishment of a through route and joint rate. Upon a petition of that sort the Commission has power to do justice both to Denver and between the different carriers participating in the transportation.

3. Upon the hearing complainant offered the findings and order of this Commission in the former case and insisted that this ought to be sufficient to establish its right to an order in the present case; *Held*, that under the amended act the entire matter must be tried *de novo*.

W. B. Harrison for complainant.

C. D. Hayt for New York, New Haven & Hartford Railroad Company, and Erie Railroad Company.

D. W. Tears for New York Central & Hudson River Railroad Company, Lake Shore & Michigan Southern Railway Company, and Michigan Central Railroad Company.

C. M. Dawes and *Vaile & Waterman* for Chicago, Burlington & Quincy Railway Company.

J. F. Vaile for Denver & Rio Grande Railroad Company, and Rio Grande Western Railway Company.

E. B. Peirce and *M. A. Low* for Chicago, Rock Island & Pacific Railway Company.

H. T. Rogers, *Robert Dunlap*, *J. L. Coleman*, and *Gardiner Lathrop* for Atchison, Topeka & Santa Fe Railway Company.

J. C. Jeffery for Missouri Pacific Railway Company.

O. C. Dorsey, *L. E. Payson*, *J. N. Baldwin*, and *W. F. Herrin* for Union Pacific Railroad Company, and the Southern Pacific Company.

Seth Mann for Pacific Coast Jobbers & Manufacturers' Association, Interveners.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

In December, 1905, this Commission, in the case of *Kindel v. Boston & Albany Railroad Company et al.*, 11 I. C. C. Rep., 495, held that the all-rail rate on cotton piece goods, any quantity, from New England producing points to Denver ought not to exceed \$1.50, and issued an order requiring the defendants in that case to cease and desist from the maintenance of the rate then in effect, which was \$2.24 upon some kinds of cotton fabrics and somewhat less upon others. Subsequently to that decision the carriers established a rate of \$1.79, and that rate is now in force.

The complainant, an association of merchants doing business in the city of Denver, brings this complaint for the purpose, apparently

of asking the Commission to enforce, under its enlarged powers, the decision which it reached in the former case.

The complaint in this proceeding avers that the rate of \$1.79 is excessive. It further avers that the defendants transport the same commodity to Pacific coast terminals in less than carload lots for \$1.50, and that, while refusing to establish any carload rate to Denver, they name a rate of \$1 to the Pacific coast in carloads on cotton piece goods and of 90 cents upon the coarser grades of cotton weavings like ducks and denims, all of which discriminates against Denver. The prayer is that Denver be accorded a carload rate on cotton fabrics and that the present rate of \$1.79 be reduced.

Upon the hearing the complainant offered the findings and order of the Commission in the former case and insisted that this ought to be sufficient to establish its right to an order in the present case. The Commission ruled, however, that under the amended act the entire matter must be tried *de novo*.

Upon consideration of the testimony and arguments we adhere to the conclusions reached in the former case. The application for a carload rating is denied. As said in that case, the unit upon which cotton piece goods are handled is the bale; and nowhere east of the Rocky Mountains is an interstate carload rating accorded to that commodity. While there are many reasons why such rating might with propriety be applied to a long-distance haul like that from points of production in the East or the South to Denver, we see no sufficient reason why these carriers should be required to establish such a rate against their will.

We are of the opinion that the rail rate on this commodity, any quantity, from New England producing points ought not to exceed \$1.50. As pointed out in the former case, it is practically 2,000 miles from New England to Denver, and 1,400 miles from Denver to San Francisco. While the latter distance is somewhat less than the former in geographical miles, measured by actual cost of transportation, it is probably greater; and measured by rates voluntarily put in effect by the defendants, it is certainly greater. The first-class rate from New York to Denver is \$2.80, and from Denver to San Francisco \$3. It has been often found by this Commission and must be recognized in all these cases, that water competition determines the rail rates between the Atlantic seaboard and the Pacific coast; but it must also be assumed that the rates voluntarily made by carriers to meet this competition are remunerative; and if \$1.50 pays carriers anything for transporting a commodity from New York to San Francisco, we think \$1.50 from New York to Denver yields a sufficient profit. Certainly, if carriers can transport a commodity for \$1 or even for 90 cents the 3,400 miles from Boston to San Fran-

cisco, they ought not ordinarily to charge more than \$1.50 for transporting that same commodity to Denver.

Even more expressive are the divisions received by the participating carriers for these services. Of the \$1 rate carriers from Chicago to Denver receive 27.3 cents; of the \$1.50 rate 39.8 cents; while of the \$1.79 rate now in effect their division is \$1.277.

These divisions are matters of agreement between the carriers and are of no concern to the public. They can only be referred to as indicating what, in the opinion of the carriers, is remunerative for the transaction of this business. It is evident in this case that the defendants accept these extremely low divisions upon transcontinental business for the purpose of inducing the movement of that traffic, and it must be presumed that they would not do this unless there were some profit to them in the movement.

It is also true that there is but little connection between the actual cost of handling cotton piece goods and the charge which may be properly made for that service; but there ought to be a certain relation between the cost of handling an entire schedule and the different rates applicable, and we do not think that, as a general principle, it can be proper to charge more for the transportation of commodities in general from eastern points of origin to the city of Denver than is charged from the same points of origin to the Pacific coast. There may be exceptions to this rule, and the commodity before us, under our decision, presents a marked exception; for in this case we allow the transportation in carload lots to the Pacific coast at \$1 per 100 pounds, and in some instances at 90 cents per 100 pounds, while the rate to Denver is in no case less than \$1.50. This arises from the fact that carriers apply a carload rating to their transcontinental business, while refusing that rating to Denver which we permit in view of water competition.

While, however, it is our opinion that this rate should be reduced as above, we do not think that any order to that effect can properly be made upon this record. This rate to Denver is not a joint through rate, but is made up of the local rate from New England to St. Louis plus the rate from St. Louis to Denver, or in some cases from St. Louis to Kansas City and from Kansas City to Denver. We might, perhaps, order a reduction of these several locals to such an extent as to bring the entire rate within the figure named by us; but we are really passing upon a through rate from New England to Denver and no such rate is now in existence. The proper method to follow in cases like this, where no joint rate exists, is to cite before the Commission the proper defendants praying the establishment of a through route and joint rate. Upon a petition of that sort the Commission has power to do justice both to Denver and between the different carriers

participating in the transportation. As was intimated in the original case, it is by no means clear that a through rate of this kind can be properly constructed by adding together several shorter distance local rates.

We might, perhaps, allow an amendment to this petition, but an entirely new issue would be thereby created, which would necessitate a further hearing. Since no costs are recoverable by either party in these proceedings, the better course appears to be to dismiss the complaint without prejudice. If the carriers do not establish the rate indicated the complainant can with equal convenience and without additional expense file a new complaint.

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No. 1183.

RAVEN RED ASH COAL COMPANY; RAVEN COLLIERIES COMPANY; DOMESTIC COAL COMPANY; RAVEN FUEL COMPANY; MINER'S MUTUAL COAL COMPANY, AND COAL CREEK COAL COMPANY

v.

NORFOLK & WESTERN RAILWAY COMPANY.

Submitted February 24, 1908. Decided March 16, 1908.

The rate on coal in carloads from mines on the Clinch Valley division of the Norfolk & Western Railway to the eastern seaboard is 10 cents per ton more than from mines on its Pocahontas division. Complainants ask that the rate on coal from their mines on said Clinch Valley division to the eastern seaboard should be the same as that of their competitors in the Pocahontas fields, the distances being substantially the same; *Held*, That complainants are entitled to relief prayed for, but no reparation will be granted.

*Harman & Pobst and William A. Glasgow, jr., for complainants.
John H. Holt, Ed. Baxter, and Lucien N. Cocke for defendant.*

REPORT OF THE COMMISSION.

LANE, *Commissioner*.

Complainants are engaged in the mining of coal in the vicinity of Raven, a station in Virginia on the Clinch Valley division of the Norfolk & Western Railway. The question for decision is whether the rate on coal, in carloads, from these mines to the eastern seaboard bears a proper relation to the rate charged from what are known as the Pocahontas and Tug River coal fields, which lie along the Pocahontas division of defendant's line for about 56 miles west of Graham, W. Va., the junction point of the two divisions. To reach the eastern seaboard, the movement from the mines is interstate, the coal being hauled through the state of West Virginia.

The question is one of grouping. Complainants claim that their mines are as near Graham, the junction point above referred to, and

therefore to the eastern markets, as are the mines of the Pocahontas and Tug River fields, while they are charged 10 cents more per ton for transportation to that market. It is the contention of complainants that the rate from their mines should be the same as that of their competitors in the Pocahontas-Tug River fields, the distances being substantially the same. In this view the Commission concurs.

The following statement shows the rates in effect on coal in car-loads, minimum weight 30,000 pounds, from various districts on the Norfolk & Western Railway to Norfolk, Va., per ton of 2,000 pounds:

Pocahontas district.....	\$1.50
Tug River district.....	1.50
Clinch Valley district.....	1.60
Thacker district.....	1.60
Kenova district.....	1.70

The proportional rates to Lamberts Point (Norfolk) for "points outside the capes" are 10 cents per ton less than figures named above, except that these reduced rates apply per ton of 2,240 pounds.

The eastern terminus of the Norfolk & Western Railway is Norfolk, and its lines extend westerly through Petersburg, Lynchburg, Roanoke, and Radford, Va., into Bluefield, W. Va., and on to Graham, W. Va., at which point the road forks. One line continues northwesterly through what is known as the Pocahontas, Tug River, Thacker, and Kenova coal fields, and beyond, to Columbus, Ohio. Another line (known as the Clinch Valley division) branches off at Graham and extends southwesterly to Norton, Va., where it connects with the Louisville & Nashville Railroad.

For rate-making purposes, what is known as the Pocahontas and Tug River fields are treated as one. They constitute what may be called the Pocahontas group. From Graham on the east to Iaeger, the most westerly point of this group, is 54 miles. From Iaeger to Williamson, the most westerly point in the next, or Thacker field, is 48 miles. This is 102 miles.

Turning now to the other or more southerly fork, the Clinch Valley division, we find that from Graham to Norton is 100 miles, all of the mines in which constitute a single-rate group. The mines of complainants are in what is designated as the Upper Clinch Valley field, the more easterly field, the nearest mine located at Cedar Bluff being 35 miles west of Graham and the farthest at Raven, 43 miles. This 8-mile field, complainants contend, should be grouped separately from the Lower (or westerly) Clinch Valley field, which at the nearest point is 36 miles west of the westernmost mine of the Upper Clinch Valley group, and this lower, or westerly, group extends 21 miles. The above are main-line distances. Some of the mines are on short branch roads, which increase the distance slightly.

The defendant makes a rate 10 cents higher eastbound from the Thacker field than from the Pocahontas-Tug River fields, making two groups out of that 102 miles. It has, however, made but one group of the 100 miles along the Clinch Valley division, applying to it the rate eastbound from the Thacker field, or 10 cents higher than the Pocahontas-Tug River fields.

In its answer the defendant claims that the rate from the Clinch Valley division was justified because of the greater cost of operation. At the hearing the defendants also claimed that all the Clinch Valley coal was similar in character to the Thacker coal and that therefore it should have the same rate eastbound, the claim being that the difference in the character of the coal justified the single grouping of the 100 miles and the higher rate. If the inference from this is that the Pocahontas coal is entitled to a lower rate than the Thacker coal because it is different in character, this theory is not followed by the road itself, for in making the rate west the Thacker field enjoys a 10-cent lower rate than the Pocahontas field; nor may the higher rate be justified because of greater value, as the Pocahontas coal is worth about 20 cents more per ton in the eastern markets.

Further than this, the evidence of the complainants is that the difference in quality between the coal mined in the upper end of the Clinch Valley, where complainants' mines are located, and that produced in the lower end is just as great as that between the Pocahontas coal and the Thacker coal. Moreover, the vice-president and general manager of the defendant further stated that "from a transportation standpoint we justified it (the 10 cent difference) on the cost of handling." Hence, it can not be held that the differential of 10 cents is justified by the difference in the coal, as the difference between the coals mined on the two divisions is substantially the same.

The other justification set up by defendant is a difference in cost of operation.

Admitting that it costs more to transport coal over the Clinch Valley division, 100 miles in length, than over the other, 105 miles in length, it does not appeal to the reason as a justification for dividing one into two fields for rate-making purposes and denying it to the other. In this particular case, in the absence of any other reason, and having found as a fact that the coal in the upper and lower ends of the Clinch Valley field is of as different character as that between the Pocahontas and Thacker fields, there is every reason in equity to divide this 100 miles into two fields, similar to those on the Pocahontas division. One of the reasons for this is that the Clinch Valley mines are peculiarly grouped in that the nearest mine to Graham in the Upper Clinch Valley is at Cedar Bluff, 35 miles west,

and the most distant is at Raven, 43 miles, the field covering only 8 miles; while the most easterly mine of the lower Clinch Valley group is at Fink, 76 miles west of Graham and 35 miles from Raven, and the most distant is at Norton, 100 miles west of Graham, a field covering 24 miles. This is a natural grouping of these mines, and a division of the field at some point between Raven and Cedar Bluff would be just and reasonable to the mines at either end of the Clinch Valley division and in line with the grouping of the Pocahontas division.

These two natural groups are further differentiated in that the Upper Clinch Valley is, like the Pocahontas field, reached only by the line of the defendant, while the Lower Clinch Valley in addition has the Louisville & Nashville, the Virginia & Southwestern, and the South & Western under construction.

The only other question is the cost of operating the Clinch Valley division as compared with the Pocahontas division. The business over the former is about 10 or 12 per cent of that over the latter. On all traffic, except coal, the same rate is made from the stations in the Upper Clinch Valley that is made from the Pocahontas field. This is defended by the carrier on the ground that coal is a special commodity and it is proper that it should bear the burden of the increased cost of operation rather than other traffic. Not passing, at present, upon that theory of rate making, we will consider the evidence.

Among the exhibits filed by the defendant is one purporting to show what it costs to earn a dollar on the Clinch Valley as compared with the Bluefield-Williamson division. From this statement it appears that in 1905 it cost \$1.0266; in 1906, \$1.0005, and in 1907, \$0.95 on the Clinch Valley division. On the Bluefield-Williamson division (covering the Pocahontas-Tug River-Thacker fields) in 1905 it cost \$0.84; in 1906, \$0.86, and in 1907, \$0.90. During that time the tons 1 mile on the Clinch Valley Division increased from 108,440,178 to 127,422,958, about 18 per cent, while the Bluefield-Williamson tons 1 mile increased from 488,839,359 to 669,042,389, about 40 per cent. It will thus be noted that while the Clinch Valley tonnage *increased* only 18 per cent, the cost of earning a dollar *decreased* 7.66 cents; while the *increase* of 40 per cent in the Bluefield-Williamson tonnage *increased* the cost of earning a dollar 6 cents.

The object of this exhibit was to show how much more it cost to do business on the Clinch Valley than on the Bluefield-Williamson division. In the first place, the difference is not great, one being 90 cents and the other 95, and the Clinch Valley showing a rapid *decrease* in cost, while the Bluefield-Williamson shows a rapid *increase* in cost, which may be urged as showing that the relation of rates in the two fields has not been proper in the last three years.

For, certainly, it must be evident that if the gross tonnage of one division increases 40 per cent and at the same time the cost of earning a dollar increases 6 cents, while on the division where the business has increased only 18 per cent, the cost decreases $7\frac{1}{2}$ cents, the former must be the more expensive to operate.

However, we are inclined to think that the figures submitted do not show the real condition as to the earnings on either division of the road, and this opinion is based upon the testimony of the auditor of the defendant that the earnings were based upon the mileage of the respective divisions. This means that these divisions originating the enormous coal traffic of the Norfolk & Western Railway were allowed nothing extra in revenue for originating that traffic, but were credited only with their proportion of the revenue earned on their divisions on a mileage basis. This would inevitably lead to a poor showing in earnings for the traffic-originating division of any railroad, as there are always large expenses incident to originating traffic and generally for the delivery of traffic. In the mountainous coal fields of the defendant costly branch lines and side tracks have to be built and maintained, over which there is practically no traffic other than the coal itself. This extraordinary cost is charged against such originating division, but in the distribution of earnings submitted by defendant it is credited only with its mileage proportion.

While not intending to elaborate on this, it might be well to point out another remarkable showing that this statement makes for the defendant. For the year ending June 30, 1907, the operating expenses and taxes of the defendant for its entire system amounted to substantially 66 per cent of its gross earnings. The interest paid on the funded debt amounted to \$3,715,696, or substantially 12 per cent of the gross earnings of \$31,164,381, which 12 per cent added to the 66 per cent makes 78 per cent, covering every expense incident to the conduct of this railroad, there being no leased lines, and leaving 22 per cent of the gross earnings as profit. The auditor of the company testified that 50 per cent of the entire tonnage of the Norfolk & Western Railway originated on the line between Williamson and Bluefield; and having in mind the fact that this is one of the greatest coal-carrying roads in the world, the statement of the auditor will not be questioned. Yet from the statement furnished as an exhibit in this case the cost of earning a dollar on this division was 90 cents, and adding thereto 12 cents for interest on funded debt we must conclude that this division was operated at an actual loss, whereas the profit of the entire property as shown by the auditor's statement was 22 per cent of the gross earnings.

This phenomenal result is doubtless due to a failure on the part of the road, in its exhibit, to credit these divisions with their true share

in earnings as traffic-originating divisions. While the exhibit may be useful in showing that the Clinch Valley is more costly to operate than the Pocahontas division, it is also true that if proper credit were given each division for originating traffic both would be shown to be profitable.

It should also be borne in mind in considering this cost to earn a dollar, as furnished by defendant, that in the case of the Pocahontas-Williamson division nearly 50 per cent of the main line mileage covered is from a territory carrying a rate 10 cents higher east than the strictly Pocahontas field, while on the Clinch Valley the rate is the same throughout. If the comparison were limited to the real points in controversy here, the Pocahontas group would show a less revenue per ton and possibly a less cost than the average shown in the exhibit, while the Upper Clinch Valley would show the *same* revenue and a less cost, the inevitable tendency of which would be to bring nearer together the cost of earning a dollar of revenue in the two fields.

The average distance of the mines in the Pocahontas-Tug River field from Graham is 26 miles, while in the Clinch Valley fields (Upper and Lower) it is 76 miles. These figures are not very instructive in the absence of the tonnage from each operation, and not at all so, when for other reasons there should be a division in the Clinch Valley field, because all of the operations in the Lower (westerly) Clinch Valley field are *at least* 76 miles from Graham. So far as the distance has any bearing, the real question is, What is the average distance of the mines in the Upper Clinch Valley district from Graham. The exact distances are not in the record, but Cedar Bluffs, on the main line, the most easterly mine, is 35 miles from Graham, and Raven, the most westerly mine, is 43 miles.

The mileage of the branch lines in the Pocahontas-Tug River fields is 97.3, with a main line mileage of 56, while in the Upper (easterly) Clinch Valley the branch line mileage is about seven (estimated), with a main line mileage of 41. If, as testified by defendant's witness, branch lines are more expensive to operate than main lines, then the Upper Clinch Valley coal field has the advantage as to cost.

Whether, because coal is a special commodity of large tonnage, it should bear the increased cost of operation, is open to question. Statistics furnished by defendant show that the Clinch Valley coal during 1907 paid 13 per cent more per ton per mile than the Pocahontas coal, while on all other traffic it paid only 1.7 per cent more. From the same source, it is found that on the Bluefield-Williamson division, the coal pays 2.1 mills less than on all other traffic, while on the Clinch Valley it pays 1.7 mills less. This indicates that the defendant does not apply the same rule to the Pocahontas-Williamson division

that it contends should be applied on the Clinch Valley, and this can not be satisfactorily answered by claiming that the Clinch Valley is substantially different from the other division as to earning capacity, because the figures furnished by defendant show a deficit on each division, although the Clinch Valley is somewhat greater, and in addition that the "special commodity," coal, on the Clinch Valley is only 45 per cent of the total traffic, while on the Pocahontas it is 65 per cent.

On April 16, 1891, 35 cents more per ton was charged over the Clinch Valley division than over the Pocahontas division. This differential was reduced to 25 cents, later to 10 cents, and from October 1, 1894, to January 5, 1897, no differential existed. On the latter date, a differential of 5 cents was made, which varied from time to time until, on November 12, 1900, the present differential of 10 cents became effective. No explanation was given as to why there should be such variation. However, it is a fact that the Pocahontas Coal & Coke Company, organized October 11, 1901, eleven months after the present 10 cent differential became effective, owns practically all the coal lands in the Pocahontas field. This corporation has issued 10,000 shares of stock, of \$100 par value, of which 9,984 are owned by the Norfolk & Western Railway Company, the other 16 being distributed for the purpose of qualifying directors. The railroad and the coal company are the joint makers of the bonds of the latter.

The coal company leases the mines in this field to the operators upon a royalty of 10 cents per ton, in addition to which the operators pay certain sums—sometimes based on so much per acre and sometimes an arbitrary—as an additional charge to be used in building the branch lines and for other purposes. The defendant, however, disclaims that the fixing of this differential of 10 cents had any relation to the fixing of the royalty of 10 cents about the same time, as the differential was made some eleven months prior to the formal organization of the coal company.

The fact that the difference in rates between the two fields during the ten years prior to the organization of the coal company had varied from 35 cents to nothing, and that during the six or seven years since such organization has remained constant at 10 cents, the same amount as the royalty, tends to show a relation between the differential and the royalty. The effect of the differential in the freight rate as against the Upper Clinch Valley field is to offset the royalty in the Pocahontas field.

It costs about 20 cents more per ton to mine Clinch Valley coal than Pocahontas coal, and it is valued at 20 cents less, which, with the differential of 10 cents, places the Clinch Valley operations at a disadvantage of 50 cents per ton.

Under all the circumstances of this case, the Commission is of opinion that complainants are entitled to the relief prayed for, and that their mines are entitled to the same rate on coal, in carloads, eastbound, as is charged from what is termed the Pocahontas-Tug River coal fields.

We are of opinion that the Clinch Valley division for purposes of coal rates should be divided into two groups—one extending from Graham to a point 17 miles west of Raven and the second extending from that point to Norton.

No reparation will be granted.

An order will be entered in accordance with the views herein expressed.

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No. 1194.

OCHELTREE GRAIN COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Submitted July 30, 1907. Decided March 16, 1908.

Defendant, having satisfied the claim and changed the rate complained of, is ordered to keep present rate on snapped corn in effect for two years.

Charles West for complainant.

M. L. Bell for defendant.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

Complaint filed on July 30, 1907, charged that an unjust and unreasonable rate was exacted by the defendant on shipments of snapped corn, or corn in the shuck, and alleged that such corn is less valuable in proportion to weight, 72 pounds making a bushel, than shelled corn, of which 54 pounds make a bushel, and prayed for the establishment of reasonable rates and for reparation in the sum of \$116.33.

The defendant filed answer, denying all the charges.

A hearing was ordered and held at Enid, Okla., on November 20, 1907, where Mr. West, complainant's counsel, stated that the reparation had been paid and the rate changed, and said to Mr. Bell, defendant's counsel, "That is correct?" Mr. Bell replied, "I understand the rate is changed and the reparation paid." Mr. L. Ocheltree, the complainant, stated that the claim agent in Chicago, after suit had been filed, sent him vouchers for all the cars, and stated that defendant had lowered the rate and returned to him the excess which had been collected in the interim of three months.

The Commission inquired of the general auditor of the defendant, and was advised that the settlement made with the complainant was under an informal ruling of the Commission in a similar case. An examination of the records of this office shows that the rate of 125 per cent of the corn rate on snapped corn, the rate complained of, was

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canceled by the defendant on September 10, 1907, and the corn rate applied to snapped corn, or corn in the shuck, on that date.

Our conclusion is that satisfaction of the demands of the complainant having been fully made by the defendant, after the filing and service of an answer, as shown by the records of the Commission, the defendant should be ordered to continue in effect the present rate on snapped corn for a period of two years, and an order will be issued accordingly.

The Commission disapproves the assumption of the defendant in applying to the adjustment of this case the authority granted in an informal case, which authority was in terms limited to that particular case.

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No. 1070.

AMARILLO GAS COMPANY

v.

**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
FORT WORTH & DENVER CITY RAILWAY COMPANY;
COLORADO & WYOMING RAILWAY COMPANY, AND
COLORADO & SOUTHERN RAILWAY COMPANY.**

Submitted February 26, 1908. Decided March 16, 1908.

Defendants' rate of \$3.35 per ton of 2,000 pounds on coke in carloads from the Trinidad coal and coke district, in Colorado, to Amarillo, Tex., is excessive and unreasonable and should not exceed \$2.90 per ton, the rate now in force for the transportation of soft coal between the same points.

C. B. Reeder for complainant.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

Turner & Boyce for Fort Worth & Denver City Railway Company.

D. C. Beaman for Colorado & Wyoming Railway Company.

Peter H. Holmes and Dines, Whitted & Dines for Colorado & Southern Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This is a complaint that the rate of \$3.35 per ton of 2,000 pounds charged by defendants for the transportation of coke in carloads from Trinidad, Colo., to Amarillo, Tex., is excessive and unreasonable.

Material facts disclosed by the record are as follows:

Complainant is a Texas corporation engaged in the operation of a plant at Amarillo for the manufacture and supply of illuminating and fuel gas. It uses what is called the water-gas process as distinguished from coal gas, and its plant has a capacity of about 120,000 cubic feet of gas in twenty-four hours. In producing its gas the company uses crude oil and coke, the latter being soft or refuse coke which can not be used for smelting purposes and which now costs at the ovens \$2.50 per ton of 2,000 pounds. The supply of coke consumed by the com-

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pany is obtained from the Trinidad coal and coke district in Colorado. The rate charged for the transportation of coke from Trinidad to Amarillo, a distance of 255 miles, is \$3.35 per ton of 2,000 pounds. Coke is produced at a number of points at shorter and varying distances from Trinidad, but the rate is the same as from the latter place.

The complaining company used 16 cars of coke during the year 1907, all of which, with the exception of one car, were shipped from Trinidad. The single car was shipped from Fort Worth, Tex. The freight rate from Fort Worth is \$2.06 per ton, and the cost of the coke there at the date this car was shipped was \$5.25 per ton.

The short-line distance from Trinidad to Amarillo and Fort Worth is via the Colorado Southern and Fort Worth & Denver City railroads. The distance from Trinidad to Fort Worth is 591 miles, and the rate on coke \$3 per ton. The rate on shipments of soft coal from Trinidad to Amarillo is \$2.90 and to Fort Worth \$3 per ton.

It appears that interstate rates on coke from the Trinidad coal and coke district to points east and north are generally higher than those on coal. Examination of published tariffs on coal and coke in other parts of the country discloses that there is no uniformity in the relation between rates on soft coal and rates on coke. In many districts they are the same, in other districts the coke rate is slightly higher, and in still others the coke rate is considerably higher. It seldom occurs that coke rates are lower than soft-coal rates.

Prior to January, 1907, rates on coal and coke from Trinidad to Amarillo were the same, \$3.35 per ton, but a reduction to \$2.90 per ton was made that month in the coal rate. Rates on coal and coke, as shown by the published tariffs of the Colorado & Southern, are the same from Trinidad to Clarendon, Tex., a point 56 miles south of Amarillo, to all points between Clarendon and Fort Worth, and also to Texline, Tex., a point 119 miles north of Amarillo. Rates on coke to points south as far as El Paso, Tex., are generally not in excess of 10 cents per ton above those on coal, and at many points they are the same. This is particularly true with respect to all points in Texas south of Clarendon.

It is contended by defendants that as coke is much lighter than coal, a cubic yard of the latter weighing about twice as much as the former, and as special equipment is required for the transportation of coke, they are entitled to receive greater compensation on shipments of the latter.

Carload rates on coke require a minimum weight of 40,000 pounds. The complaining company paid for an average of 49,318 pounds per car on its shipments in 1907. In no case was there a failure to load the minimum and more than 70,000 pounds of coke were loaded in one of the cars. No special equipment is used for shipments of coke

from Trinidad to Amarillo, box or stock cars being employed in each instance.

With respect to low rates on coke to Fort Worth and points between there and Amarillo, it is maintained that no traffic moves to those points from Trinidad, and that they are mere paper rates which are not remunerative for the haul. It is also maintained that the rate of \$2.06 per ton on coke from Fort Worth to Amarillo is not remunerative, but is forced upon the roads by the Texas Railroad Commission.

Under all the circumstances of this case it is found that the rate of \$3.35 per ton on coke in carloads now in force from Trinidad to Amarillo is excessive and unreasonable. The rate is 1.45 cents per ton per mile, while the average rate received by the Colorado Southern on all its business during the year 1907 was 1.033 cents per ton per mile, and the rate of the Fort Worth & Denver City for the same period 9.11 mills per ton per mile. The average rate paid on all commodities in the whole country is 7.66 mills per ton per mile. Coke is a low-grade commodity, moving generally under a rate much less than the average. There are no transportation or other reasons shown in this case which warrant a rate of 45 cents more per ton for the transportation of coke than soft coal. The coal rate is on the basis of 1.14 cents per ton per mile, and no doubt is highly remunerative to the railroads. The coal rate is not here in issue, and this decision must not be held to approve or express any opinion concerning the reasonableness thereof. We are clearly of the opinion, however, that, on the showing here made, the rate from the Trinidad coal and coke district to Amarillo should not exceed \$2.90 per ton of 2,000 pounds, the rate now in force for the transportation of soft coal between the same points. An order will be entered accordingly.

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No. 1309.

MERCHANTS FREIGHT BUREAU OF LITTLE ROCK,
ARKANSAS,

v.

MIDLAND VALLEY RAILROAD COMPANY AND CHICAGO,
ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Submitted February 14, 1908. Decided March 16, 1908.

Upon complaint showing failure of defendants to establish through routes and joint rates for transportation of cotton seed, in carloads, from certain points on Midland Valley Railroad in Oklahoma, to Little Rock, Ark; *Held*, That failure of defendants to establish such routes and rates unduly discriminates against complainant in favor of manufacturers at Fort Smith, Ark., and Muskogee, Okla

Morris M. Cohn for complainant.

J. W. McLoud for Midland Valley Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, *Chairman*:

In this case complainant asks the Commission to establish through routes and joint rates for the transportation of cotton seed, in carloads, from points on the Midland Valley Railroad in Oklahoma, namely, Williams, Panama, Bokoshe, Keota, Stigler, Porum, Warner, Keefeton, Muskogee, Taft, Haskell, Elder, and Tulsa, to Little Rock, Ark., via the Midland Valley Railroad, Hartford, Ark., and the Chicago, Rock Island & Pacific Railway. By stipulation of the parties the case was submitted for decision upon complaint, answer of the Midland Valley, and briefs. The answer practically admits all allegations of the complaint, except that failure to establish the through route and joint rates constitutes a violation of law. The facts so before us are in brief as follows:

Complainant is a voluntary association composed of merchants and manufacturers of Little Rock, Ark. Defendants are common carriers subject to the act to regulate commerce.

At Little Rock, Ark., are located manufacturers of cotton-seed products who desire to purchase cotton seed at points on the Midland Valley Railroad in Oklahoma and to have the same transported to Little Rock under joint through rates, in order to avoid the inconvenience and expense of transferring such shipments at Hartford from the Midland Valley to the Rock Island cars. The record does not indicate the expense of such transfer, but it is apparently sufficient to make impracticable the purchase by complainant's members of cotton seed produced at points along the Midland Valley. No joint through rate is at present in force between the points of origin and destination in question.

The joint rates requested are the local rates of the Midland Valley from such points of origin to Hartford plus the local rate of the Rock Island from Hartford to Little Rock. The Rock Island is willing to join with the Midland Valley in making the through route and joint rates demanded. The Midland Valley refuses to join in such through routes and joint rates because it believes its refusal to do so is for the best interest of itself and manufacturers upon its line.

Manufacturers of cotton-seed products are located upon the line of the Midland Valley at Fort Smith, Ark., and Muskogee, Okla. These mills, according to the record, are prepared to purchase all the cotton seed for sale at the points from which joint rates are asked. By carrying the cotton seed to Fort Smith and Muskogee the Midland Valley also obtains the outbound shipments of the manufactured product. This defendant submits the question, "Whether there is any requirement of law or any obligation resting upon it as a common carrier to foster the interests of a city situated upon another line of railroad, 150 to 250 miles from Fort Smith and Muskogee, which are located upon its own line of railroad." Further, it avers that it is not a common carrier to Little Rock or beyond its own lines, and that it was not built and is not being operated for the benefit of the people of Little Rock, but for the people living in towns and cities and in the territory tributary to its own line of railroad. It urges, in short, that the Midland Valley owes no duty to the manufacturer of cotton-seed products at Little Rock.

We can not sanction the limited view of its duty to the public entertained by the Midland Valley. Section 1 of the act requires carriers to establish through routes and reasonable rates applicable thereto. Section 15 provides that the Commission may establish through routes and joint rates applicable thereto as the maximum to be charged, when that may be necessary to give effect to any provision of the act, provided no reasonable or satisfactory through route exists.

It may be urged that there is at present a through route, which can be used by payment of the Midland Valley's local charge to Hartford

and the Rock Island's local charge from Hartford to Little Rock; but such through route can not be considered either reasonable or satisfactory when it puts upon the shipper the burden of unloading, transferring, and reloading the shipment at an intermediate point, and in effect prohibits the shipments desired to be made. The joint rates prayed for, being equal to the full local charges now in force, must, in the absence of a showing to the contrary, be held to afford the carriers sufficient remuneration for the proposed service.

Although the effort of the Midland Valley to protect and foster industries on its own line within proper limits is praiseworthy, we see no justification for an attempt on its part to create a virtual monopoly in those industries by an arrangement which prevents the shipment of raw material off its line. It is the duty of a railroad to carry goods offered to it for shipment, but it is not its province to determine to what points those goods shall be carried. While the present practice may benefit the manufacturers of cotton-seed products at Muskogee and Fort Smith, it would seem to a corresponding degree to injure the producers of cotton seed by depriving them of markets they might otherwise enjoy. It is to be inferred that if the manufacturer at Little Rock can buy cotton seed on the Midland Valley the producer will have the advantage of increased competition for the purchase of his commodity, while the manufacturers at Fort Smith and Muskogee will still retain whatever advantage may inure from their proximity to the field of production. A carrier owes certain duties to anyone who offers goods to it for shipment, whether that person be on or off its line; but even granting that its only duty is to shippers upon its right of way it is difficult to see how it departs from this conception of duty when it offers to the producers along its line an enlarged market for the sale of their shipments.

We are of opinion that the failure of defendants to establish the through routes and joint rates prayed for unduly discriminates against complainant, in favor of manufacturers at Fort Smith and Muskogee. An order will be entered requiring defendants to establish a through route for the transportation of cotton seed, in carloads, from Williams, Panama, Bokoshe, Keota, Stigler, Porum, Warner, Keefeton, Muskogee, Taft, Haskell, Elder, and Tulsa, Okla., over the Midland Valley to Hartford, Ark., and thence over the Rock Island to Little Rock, Ark., and to apply to such transportation of cotton seed, in carloads, joint through rates which as to each of said points of origin shall not exceed the present local charge of the Midland Valley from such shipping point to Hartford plus the present local charge of the Rock Island from Hartford to Little Rock.

No. 1293.

S. S. QUIMBY, WM. HUTCHINSON, G. R. CAMPBELL & COMPANY, D. C. GETCHELL, EAST MACHIAS LUMBER COMPANY, JAMES MURCHIE'S SONS COMPANY, HENRY B. EATON, H. F. EATON & SONS, RED BEACH PLASTER COMPANY, AND BLANCHARD MANUFACTURING & CANNING COMPANY

v.

MAINE CENTRAL RAILROAD COMPANY AND WASHINGTON COUNTY RAILWAY COMPANY.

Submitted February 15, 1908. Decided March 16, 1908.

Complainants, situated in the eastern portion of Washington County, Me., allege that by reason of their location they can not take advantage of the milling-in-transit privilege on corn, although their competitors at Bangor and Lewiston, Me., can do so, and therefore allowance of the transit privilege at Bangor and Lewiston constitutes undue discrimination against complainants; *Held* that the disadvantage under which complainants labor is primarily due to their unfavorable location and that it is not the province of the Commission to overcome disadvantages of this nature by adjustment of transportation charges.

Albert M. Rollins for complainants.

Edgar J. Rich for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The principal contention of this complaint is that the milling-in-transit privilege allowed by defendants to millers on their lines subjects complainants to undue and unreasonable prejudice and disadvantage, in violation of section 3 of the act to regulate commerce, and operates to the undue preference and advantage of millers situated on the line of the Maine Central at Bangor and Lewiston, Me. The case is submitted upon an agreed statement of facts, which may be summarized as follows:

Defendants allow the milling-in-transit privilege at points on their lines under conditions which are stated in Maine Central tariff I. C. C. No. 1650 in the following language:

Corn at through rate may be stopped in transit for milling at stations in a direct line shipping station to destination, by special arrangement; not otherwise. With the milled product may be forwarded flour, feed, oats, wheat, corn. Weight from the

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mill may be less than to the mill, but to destinations taking arbitraries over the through rates the minimum charge will be 24,000 pounds—actual weight when in excess. One car out cancels one car in, and the privilege on each car is limited to thirty days from date of arrival at milling station, except when shipments are delayed in transit from sources of supply, then time may be extended by special arrangement. Rate, 1 cent per 100 pounds; minimum charge, \$3 per car, plus car rental at 50 cents per day (twenty-four hours or fraction—Sundays and legal holidays included) for actual time cars are detained by the mill.

Under this rule millers at Bangor and Lewiston, Me., purchase large quantities of corn in middle western States, ship it to Lewiston and Bangor, there manufacture it into cracked corn and corn meal, and then ship the manufactured product to more easterly points on defendants' lines, including points in Washington County, Me., at the through rate in force from the point of origin of the corn to the point of final destination of the manufactured product, plus the milling-in-transit charge.

Complainants operate old-style water mills along the line of the Washington County railway, in Washington County, Me. Their mills were built before the railway was constructed and are not conveniently situated in respect thereto. Washington County is on the eastern border of Maine, adjoining the province of New Brunswick. Complainants have no access to the province of New Brunswick for the sale of their product and therefore can not, by taking advantage of the milling-in-transit privilege, forward the manufactured product of their mills to points east thereof, except points in Washington County. Inasmuch as complainants' mills are situated at points in the extreme eastern part of Washington County, it follows that as a practical matter they can not avail themselves of the milling-in-transit privilege because there is no market to which they could send the manufactured product under the through rate. On the other hand, if they desire to sell their products at points west of their mills in Washington County, they must pay the through rate to the mills plus the local rate from the mills back to the point of final destination, which exceeds the through rate to the same point enjoyed by Bangor and Lewiston. It therefore results that complainants' market is limited to the immediate vicinity of their mills, whereas before the construction of the Washington County railway their market was larger and embraced practically all of Washington County. Complainants ask the Commission to enter an order restricting the present milling-in-transit privilege in such manner that the millers at Bangor and Lewiston shall not be able to take advantage thereof in making shipments to points in Washington County.

The milling-in-transit practice has been brought to the attention of the Commission directly or incidentally in a number of cases. For the present purpose it may be said that the decisions on this point,

prior to the amendments to the act of June 29, 1906, amount to holding the stopping of a commodity in transit for treatment or reconsignment to be in the nature of a special privilege which the carriers might concede, though the shipper could not, under the law as it then stood, demand it as a matter of lawful right. Whether the Commission has authority under the amended law to require such privilege to be granted is not involved in this case and is not decided, but allowance of the privilege by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another section served by its line. *Diamond Mills v. B. & M. R. Co.*, 9 I. C. C. Rep., 311; *Koch v. P. R. R. Co.*, 10 I. C. C. Rep., 675; *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.*, 11 I. C. C. Rep., 90.

It inevitably results that by allowance of the milling-in-transit privilege local millers are subjected to competition which would not otherwise exist; but, if the privilege is general, the miller may recoup himself for a partial loss of his local market by availing himself of the transit privilege and seeking new and more distant markets. At the end of railway systems, on the border of a foreign country there are localities to which the railway company can not give the compensating feature of additional markets, and such localities will find their market lessened by invasion, with no opportunity to expand. Does allowance of the milling-in-transit privilege unduly discriminate against shippers in these exceptional locations?

Complainants' contention seems to reduce itself to this, that, on account of difference in location, they can not take advantage of the milling-in-transit privilege, although their competitors at Bangor and Lewiston can do so; and since complainants can not take advantage of the privilege, they are injured by having it accorded to others.

It is evident that the disadvantage under which complainants labor is primarily due to their unfavorable location, and it has been repeatedly held that it is not the province of the Commission to overcome disadvantages of this nature by adjustment of transportation charges. *Squire & Co. v. M. C. R. R. Co.*, 4 I. C. C. Rep., 611. The milling-in-transit privilege is so generally allowed, and is of so much advantage to the public that the Commission probably would not be justified in ordering it discontinued where it is allowed to all parties similarly situated who wish to take advantage of it. Of course, if the privilege were denied to complainants and allowed to their competitors, the discrimination so practiced might be unlawful; but no such claim is made in this case. Therefore we are constrained to hold that the regulation here complained of does not constitute a violation of the statute. Moreover, it is difficult to see how the relief asked would benefit complainants. Certainly it will not be contended that even if the milling-in-transit privilege were denied to Bangor and

Lewiston in respect of Washington County, the Commission could prevent the grain from being milled at the point of production and shipped in its manufactured state to Washington County. If that were done, apparently complainants would have competition quite similar to that from which they now suffer.

Complainants also say that under the milling-in-transit arrangement the transportation of cracked corn and corn meal from the mill to final destination under the through rate on corn constitutes an undue discrimination against corn and shippers thereof; in other words, there should be a higher rate upon the manufactured product than upon the raw material. Broadly speaking, this proposition is true, but it has important exceptions which are made, in the main, for the purpose of allowing factories to be located in various parts of the country, instead of those points to which they would be restricted if the rule in respect of raw material and manufactured products were strictly enforced. We understand that the practice of carrying the milled product to its destination at the balance of the through rate, plus the milling-in-transit charge, is a common feature of the milling-in-transit privilege, and we would not be justified in condemning this feature of the transit privilege upon a mere statement of its existence and in the absence of a showing that it does in fact constitute a violation of the law. It follows that this complaint must be dismissed. An order will be entered accordingly.

As above indicated, this case has been submitted upon an agreed statement of facts and the decision is confined to the case thus presented. While the facts before us are sufficient to enable us to pass upon the direct issue involved, they do not throw as much light as might be desired upon collateral issues. It is observed that the tariff in question provides that the transit privilege will be allowed by special arrangement, not otherwise. The Commission is not informed of the nature or conditions of the special arrangement required, but it is of opinion that this provision is fairly open to criticism. The transit privilege, if allowed, should be open to all shippers similarly situated upon like terms, and those terms should be so clearly and definitely stated that knowledge thereof may be acquired from examination of the carrier's tariff. It is also noted that under the so-called transit privilege on corn it is provided that other grains and their products may be forwarded from the milling point. This provision is also believed to be open to criticism, as it departs entirely from the underlying idea of milling in transit and forwarding the product of the grain brought to and stopped at the milling point. No order will now be entered in this connection, but it is assumed that the carrier will promptly amend its tariff in accordance with the foregoing suggestions.

No. 942.

CEDAR RAPIDS & IOWA CITY RAILWAY & LIGHT
COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

Submitted October 14, 1907. Decided March 2, 1908.

1. On complaint of failure by defendant to establish through routes and joint rates with complainant between interstate points on their respective roads, it appeared that the shipping communities at points on complainant's line between Coralville, Iowa, and Cedar Rapids, Iowa, do not at this time enjoy the benefit of any reasonable or satisfactory through route from and to Chicago and other points reached by defendant; *Held*, That through routes and joint rates thereover which shall not exceed by more than 10 per cent the class and commodity rates of defendant between Chicago and other points and Cedar Rapids, should be established and maintained for the transportation of interstate traffic from and to Coralville and all other points on complainant's line intermediate to Cedar Rapids to and from Chicago and other points on the line of defendant via junction point of the two roads at Cedar Rapids.
2. *Chicago & Milwaukee Electric Ry. Co. v. Illinois Central R. R. Co.*, 13 I. C. C. Rep. 20, cited and affirmed and the distinction made between the transportation requirements of mere loading points serving one or more farms, as described in that case, and the more extensive requirements of small centers where general merchandising is done and the products of the countryside are concentrated for shipment, and coal, lumber, and other commodities are brought in to supply local needs.

F. F. Dawley and *John A. Reed* for complainant.

Samuel A. Lynde for defendant.

S. E. Lehnen for North Liberty Elevator Company, intervener.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The Cedar Rapids and Iowa City Railway & Light Company, incorporated under the laws of the state of Iowa in 1903, owns a right

13 I. C. C. Rep.

of way 100 feet wide from Cedar Rapids, Iowa, southward to Iowa City, in the same state, a distance of about 27½ miles, over which it operates by electricity a single-track railroad of standard gauge. Its roadbed, as is admitted by the defendant, is constructed in a substantial manner and in conformity with the standard that is usual with the smaller steam railroads in that section of the country. The rails, 70 pounds to the yard, are heavier than those customarily used on the branch and lateral lines of the larger carriers in that region. The road crosses 28 well-built bridges and culverts constructed, as the complainant's witnesses state, upon plans that are practically identical with those used by the defendant in similar structures on its lines. In other respects the record satisfactorily shows that the complainant's line is capable of moving freight in trainloads as well as in carloads. But its equipment is limited in character and quantity; besides six passenger coaches and one express car, it has but six freight cars; all its cars however are equipped with standard couplers and automatic air brakes. It has one electric motor of sufficient power, according to the testimony, to haul a train of from six to ten loaded freight cars. Its deficiencies in the matter of equipment for carload traffic have heretofore been supplied by the defendant and by the Chicago, Milwaukee & St. Paul Railway Company, with both of which lines the complainant has physical connections at Cedar Rapids.

The complainant is participating in interstate transportation and has filed with the Commission its schedule of local rates and has made them applicable also to interstate movements; and the record shows a growing traffic during the past year in carload and less than carload quantities to and from interstate points. In order to be able to take full advantage of its opportunities and to meet the requirements of the several shipping communities along its line, the complainant has requested the defendant to join with it in establishing through routes and joint rates between interstate points on their respective roads. The defendant, however, refused to enter into such an arrangement on the general ground, as stated by two of its officials who testified in the case, that the complainant is not in fact a "full-fledged" railroad; that it is not the policy of the defendant to make such arrangements with electric lines that can not reciprocate in the matter of the exchange of equipment; that such arrangements with small lines that are unable to furnish their percentage of equipment constitute one of the chief causes of the inability of the larger carriers to meet their demands for cars; and that the usual result of such arrangements is that the larger carriers are compelled to furnish equipment for the entire traffic of such lines; and this the defendant does not consider a good business proposition.

The complainant declines to accept these reasons as satisfactory grounds for the refusal of its request. It has therefore appealed to the Commission for an order under section 15 requiring the defendant to establish such through routes and joint rates. And in this application the North Liberty Elevator Company, which is engaged at North Liberty in buying and shipping grain to interstate points, has joined by filing an intervening petition. The petition of the complainant is based upon its capacity to handle freight in trains as well as in carloads and also upon its contention that large quantities of freight originate in the territory tributary to its line, and to the several stations thereon, for which there are now no reasonable or satisfactory through routes or any joint rates from and to the consuming and producing points on the line of the defendant. The claim of the intervener is that owing to the fact that no through routes and joint rates are available for the shipment of the commodities in which it deals its market is unduly limited.

The general principles controlling the exercise by the Commission of the power vested in it under section 15 to establish through routes and joint rates in cases of this kind have recently been considered in *Chicago & Milwaukee Electric Railway Company v. Illinois Central Railroad Company et al*, 13 I. C. C. Rep., 20. It will not be necessary therefore to discuss again the questions of law involved in such applications. It will suffice to examine the record only so far as may be required to ascertain in what material respects the facts of this case differ from the facts appearing of record in that case.

Cedar Rapids is a commercial center of no small importance. It has a population of 29,000 inhabitants. Passing southward from this northern terminus the complainant's line runs through Swisher, Cou Falls, and thence through two small stations to North Liberty, where the intervener is engaged in business as heretofore indicated. From that point the line proceeds in the same general direction southward through two small stations to Coralville, and thence to its southern terminus at Iowa City. None of these intermediate points is served by any carrier other than the complainant. But Iowa City, also a place of some commercial activity, with a population of 8,000, is reached by the Chicago, Rock Island & Pacific Railway. With the lines of that company the complainant, however, has no physical connection there or elsewhere.

The complainant's right of way does not parallel the line of any steam railroad. It serves a section of country of considerable area that lies between the tracks of the Chicago, Rock Island & Pacific Railway, the Chicago, Milwaukee & St. Paul Railway, and of the defendant, and is said to be one of the finest agricultural sections in Iowa. The region is well settled, and its principal products

are grain and stock. By some of the witnesses it is estimated that with better outlets to and from consuming markets this producing area would originate and consume as many as 5,000 carloads of freight yearly, of which 75 per cent would come from or be destined to interstate points. From its various loading stations the complainant actually hauled during the last year 423 carloads of live stock, of which 170 carloads were consigned to points outside the state. It moved during that year a total of 930 carloads of freight of all kinds.

Of the several stations along the line of complainant's road Swisher, 9 miles south of Cedar Rapids, and North Liberty, 18 miles south of Cedar Rapids, are the more important shipping points. At the former place there is a grain elevator, a coal yard, a yard for loading live stock, a general store, and a lumber yard. There is sufficient business there to require the complainant to maintain a day and night agent at its station and also to justify a side track 1,000 feet in length. The nearest station from Swisher on the line of the defendant is Fairfax, some 9 miles distant. North Liberty, with a population of from 400 to 500 inhabitants, is a local shipping point of growing activity. It maintains an elevator, a coal yard, a lumber yard, three or four stores, and a blacksmith shop. The complainant also requires a day and night agent at its station at this point. It also has a side track there 1,050 feet in length. At Coralville there are several stores, a flour and feed mill, and an electric-light plant that furnishes light and power to Iowa City, which is 3 miles distant. At this point the complainant also maintains a day and night agent at its station. A number of witnesses residing and doing business at and near the various stations along the line of the complainant unite in saying that it would be a material advantage to them as shippers to have the benefit of through routes and joint rates, as prayed for in the petition.

The record does not clearly indicate the distances from all the intermediate points on the complainant's line to the nearest available freight-receiving stations on the lines of the steam railroads that surround the region in question. North Liberty, which is near the center of the area and 5 miles from Tiffin in a straight line, is 7 miles from that point by the country roads; it is 12 miles from Oxford, also a point on the Rock Island road. It will doubtless be agreed that these distances make a long drive for hogs and cattle and a long wagon haul for grains and other heavy farm products produced in the immediate neighborhood of North Liberty; they are long distances for merchants to haul their stocks of goods. And when facilities are closer at hand over another road we regard it as unreasonable to require the intervener and other shippers and merchants at North Liberty to go so far in order to reach a railroad station at and from which they may receive and ship their merchandise

under through bills of lading and have the benefit of joint through rates. While some of the other stations on the complainant's line are nearer than is North Liberty to freight-receiving stations of the regular carriers, none is so near as to give its merchants and shippers the prompt and reasonably convenient access to through shipping facilities to which they are fairly entitled. The transportation requirements of these small centers where horses, cattle, hogs, and other products of the adjacent countryside are concentrated for shipment, where some small general merchandizing is done, and to which lumber, coal, and other commodities are brought in to supply local demands, are more extensive than the transportation requirements of a mere country loading point serving one or more farms of the character described in the case above cited. And such centers, though relatively of small commercial importance, are nevertheless entitled to and should receive at the hands of the carriers ample facilities for handling their traffic from and to the markets on through routes and joint rates.

On the whole record we are satisfied that the shipping communities on the complainant's line, the merchants and storekeepers doing business there, and the farmers and other producers in the regions tributary to those points, do not at this time enjoy the benefit of any reasonable or satisfactory through routes from and to Chicago and other points served by the defendant carrier. We are also satisfied that there is sufficient traffic offered for through movement to justify the Commission in ordering the establishment of such through routes and joint through rates. These observations must be understood as applying to Coralville and to all stations on the complainant's line north of that point. As heretofore stated, the southern terminus of the complainant is Iowa City. Although there was an effort to prove that the shippers of Iowa City are not well served by the Chicago, Rock Island & Pacific Railway Company, which has long maintained a freight and passenger station at that point, the contention is practically unsupported by testimony and we must regard it therefore as being without merit. On the evidence adduced we are of the opinion that the Rock Island, through various junction points with the lines of the defendant, offers the shippers of Iowa City and the country district tributary to it reasonable and satisfactory through routes to and from Chicago and various other points on the lines of the defendant; there is therefore no sufficient basis for an order establishing through routes from and to Iowa City via the complainant's line.

There remains for consideration, therefore, only the question as to what joint through rates shall be established from and to Coralville, and the intermediate points to the north on the line of the

complainant, to and from Chicago and other points on the line of the defendant via the junction point of the two roads at Cedar Rapids. The class rates of the defendant, expressed in cents per 100 pounds, between Chicago and common points and Cedar Rapids are as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	58	47	35	24	19	24	19	16	14	11

The rates on some of the more important commodities produced in and shipped, in more or less large quantity, from the country surrounding Cedar Rapids are as follows:

Commodity.	Per car.	Per 100 pounds.
Horses and mules	\$55.00	..
Cattle or calves		\$0.21
Hogs18½
Sheep23
Flaxseed17
Wheat13
Corn, oats, rye, and barley11

The towns of Beverly, Fairfax, Norway, Watkins, Blainstown, and Luzerne lie on the line of the defendant west of Cedar Rapids at distances of 6, 9, 15, 20, 25, and 30 miles, respectively. All these points are grouped by the defendant with Cedar Rapids and take the same class rates. As far west as Watkins the rates on the commodities above mentioned are also substantially the same as the rates on the same commodities to Cedar Rapids. Lying some miles west of the right of way of the complainant are Fairfax, Walford, and Amana on the Chicago, Milwaukee & St. Paul, and Oxford and Tiffin on the line of the Chicago, Rock Island & Pacific; all of which points have been grouped by the respective roads, so far as rates are concerned, more or less closely with Cedar Rapids. While it may not be quite accurate to say that they all take the Cedar Rapids class and commodity rates, such a statement would be substantially true, for the variations, where variations exist at all, are very slight. Moreover, the class and commodity rates between Chicago and common points and Iowa City are substantially the same as the Cedar Rapids rates. Coralville and points north of it, intermediate to Cedar Rapids, thus lie in a group of points taking practically the same rates to and from Chicago. And therefore to deny to them equal rates with those points will manifestly leave shippers on the line of the complainant at a disadvantage. Nevertheless some recognition must be given to the well-established rule that joint rates over two or more connecting lines may and ought ordinarily to be higher than the rates on one-line movements. Taking all these elements into consideration,

a proper adjustment of the matter would seem to require us to group Coralville with all other points on complainant's line intermediate to Cedar Rapids, and to establish joint through rates between the group so formed and all interstate points on the defendant's line by adding 10 per cent to the defendant's class and commodity rates between Cedar Rapids and other points on its line. It will be understood, however, that the joint rates so to be established shall in no case exceed the combination of locals on Cedar Rapids. In case no agreement can be reached by the two companies as to the divisions of the joint through rates so established, the Commission upon suggestion by either of them will give the matter further consideration and will direct what the divisions shall be.

An order may be entered accordingly.

13 I. C. C. Rep.

No. 1156.

F. J. GENTRY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
AND CHOCTAW, OKLAHOMA & GULF RAILROAD COM-
PANY.

Submitted January 2, 1908. Decided March 9, 1908.

For reasons given in *Haines v. C., R. I. & P. Ry. Co. et al.*, 13 I. C. C. Rep., 214, the complaint in this case is dismissed.

West, Scott & Otjen, F. G. Walling, and F. L. Boynton for complainant.

E. B. Peirce and M. L. Bell for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint was filed on June 28, 1907, by a retail coal dealer, residing at Pond Creek, Okla.

The complaint is as to rates on coal from Hartford and Huntington, Ark., and Alderson, Krebs, Dow, McAlester, Fairville, Wilburton, Haileyville, Burr Oak, Baker, Howe, Gowan, Mulberry, and Henryetta, all in the state of Oklahoma (formerly Indian Territory), to Pond Creek and other points in Grant County, Okla.

This case is in all respects the same as that of *Haines v. Chicago, Rock Island & Pacific Railway Company et al.*, 13 I. C. C., Rep. 214, and for the reasons therein stated this complaint will be dismissed.

13 I. C. C. Rep.

No. 1126.

WYMAN, PARTRIDGE & COMPANY; NORTH STAR SHOE COMPANY; McDONALD BROTHERS COMPANY; POWERS MERCANTILE COMPANY; L. S. DONALDSON COMPANY; MINNEAPOLIS DRY GOODS COMPANY; JOHN W. THOMAS COMPANY; PLANT RUBBER COMPANY; FRANK S. GOLD COMPANY; THE GRIMSRUD SHOE COMPANY; ELIEL-JERMAN DRUG COMPANY; GEORGE R. NEWELL & COMPANY; HURTY-SIMMONS HARDWARE COMPANY; LINDSAY BROTHERS; W. B. & W. G. JORDAN; GREEN DELAITRE COMPANY; THE PALACE CLOTHING HOUSE; THE JOHN LESLIE PAPER COMPANY; BRADSHAW BROTHERS; MINNEAPOLIS IRON STORE COMPANY; WINSTON-HARPER-FISHER COMPANY; SLOCUM BERGREN COMPANY; W. S. NOTT COMPANY; W. K. MORISON & COMPANY; BOUTELL BROTHERS; NEW ENGLAND FURNITURE AND CARPET COMPANY; TWIN CITY SHOE COMPANY; KENNEDY, ANDREWS DRUG COMPANY; THE WILLIAMS HARDWARE COMPANY; KELLOGG-MACKAY-CAMERON COMPANY; WARNER HARDWARE COMPANY; GALE-MONROE COMPANY; McCLEILLAN PAPER COMPANY; DAYTON DRY GOODS COMPANY, AND CHICAGO ASSOCIATION OF COMMERCE, INTERVENER,

v.

BOSTON & MAINE RAILROAD; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; GRAND TRUNK RAILWAY OF CANADA; ERIE RAILROAD COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; LEHIGH VALLEY RAILROAD COMPANY; ERIE & WESTERN TRANSPORTATION COMPANY; CANADA ATLANTIC TRANSIT COMPANY; MUTUAL TRANSIT COMPANY; PORT HURON & DULUTH LINE OF STEAMERS; WESTERN TRANSIT COMPANY; GREAT NORTHERN RAILWAY COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; WISCONSIN CENTRAL RAILWAY COMPANY; CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY

COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, AND CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted March 7, 1908. Decided March 16, 1908.

1. Unless a railway forming a part of a lake-and-rail route sees fit to hold itself responsible for losses arising from perils of the sea, it should tender to the public a transportation contract which leaves shippers free to arrange for their own marine insurance.
2. The defendants advanced their through rates from eastern points to Chicago and Minneapolis 3 cents per 100 pounds on first class and 1½ cents on Rule 25, etc., and these new rates included the cost of marine insurance. The bill of lading issued did not show definitely the rights of the shippers thereunder; *Held*, That the advanced rates are unreasonable and should be reduced unless the carriers issue bills of lading making them responsible for loss by perils of the sea.

Fred B. Dodge for complainants.

H. C. Barlow for Chicago Association of Commerce, Intervener.

Clyde Brown, G. S. Patterson, W. S. Jenney, and G. F. Brownell for New York Central & Hudson River Railroad Company, Pennsylvania Railroad Company, Erie Railroad Company; Delaware, Lackawanna & Western Railroad Company; Erie & Western Transportation Company, Mutual Transit Company, and Western Transit Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

Three routes exist for the transportation of merchandise from the east to the west—the all-rail, the ocean-and-rail, and the rail-and-lake. By the first, as its name implies, the transportation is entirely by rail; by the second freight is carried from some Atlantic seaport like New York or Boston to some more southerly port like Norfolk, from which it is taken by rail to destination; by the third traffic moves from the eastern point to some port upon the Great Lakes like Buffalo, is thence transported by water to a western lake port like Chicago or Duluth, and from thence again by rail to destination if that be an interior point. There is a fourth route termed the “canal-and-lake” route, being through the Erie Canal to Buffalo and thence via the Great Lakes and rail, but this route may be omitted from the discussion.

When the second and third of the above routes are used a certain amount of water transportation is involved. In accordance with the terms of the Harter Act, so called, water carriers may exempt themselves from responsibility on account of perils of the sea, except in so

far as the loss results from their own negligence, and to secure protection against these perils of the sea for which the carrier is not responsible marine insurance is usually taken out. The cost of this insurance has been and is included in the rate which applies via the ocean-and-rail route, but the almost universal rule is for the shipper to himself provide this insurance, and such had always been the practice upon the rail-and-lake route up to the season of 1907.

At the opening of navigation in 1907 rail-and-lake rates were advanced and the cost of insurance was included in the rate. These advances were: To Minneapolis 3 cents on first and second class, 1½ cents on Rule 25, 1 cent on the third, fourth, and fifth classes and Rule 26, and one-half cent on the sixth class. Rates to Chicago were at first advanced but 2 cents upon the first two classes, but in July another cent was added, thus making the advance to Chicago the same as to Minneapolis except on Rule 25, which was advanced 2 cents to Chicago. During the season a reduction of 1 cent was made in the sixth class, thus producing a final reduction of one-half cent in that class. The lawfulness of these advances and of the advanced rates as they exist was attacked by the complaint as originally filed.

The original complainants were merchants located and doing business in the city of Minneapolis who had occasion to ship from various points in the east via this route. After the filing of the complaint the Merchants' Association of Chicago, representing certain shippers in that city, filed an intervening petition which put in issue not only the reasonableness of the advanced rates, but also claimed that these advances by being applied to Chicago and Minneapolis while no corresponding advances were made at St. Louis, worked a discrimination against the former cities. This claim will be first considered.

St. Louis, Chicago, and Minneapolis all compete in jobbing goods throughout Missouri River territory and territory west extending as far as the Pacific coast. In order that these localities may be upon a substantial parity in this business, it is necessary that the rates upon which they bring their supplies from eastern points of production should bear a certain relation to one another, and such relation has been for a long time in the past established and maintained. Of the three routes above mentioned the standard is the all-rail, the rates of the other two being somewhat less and made with reference to the all-rail rates. It appears that the ocean-and-rail rates have differed by a fixed arbitrary or differential from the all-rail rates, but this does not seem to have been true of the rail-and-lake rates. Taking New York as the point of origin in the East and the first-class rate as illustrative of all the classes, the rail rate to Chicago has been 75 cents, to St. Louis 87 cents, while the ocean-and-rail is, in each case, 10 cents lower than the all-rail, being 65 cents to Chicago

and 77 cents to St. Louis. The rail-and-lake rate since 1901 has been 59 cents to Chicago and 77 cents to St. Louis; that is, while the rail-and-lake rate has been 6 cents lower than the ocean-and-rail at Chicago, it has been the same at St. Louis. The advance in 1907 made that rate 62 cents to Chicago, but left it 77 cents to St. Louis.

If the cost of bringing merchandise from eastern points to Chicago were materially increased, while remaining the same at St. Louis, this would be strong ground for claiming that Chicago was subjected to unfair treatment. It does not seem probable that the effect of the present change can be at all serious. The relation in the all-rail and the ocean-and-rail rates still remains the same, and the advance in the rail-and-lake rates is comparatively slight. Those rates were not advanced to St. Louis because they were already equal to the ocean-and-rail rates, and since the ocean-and-rail is a somewhat more desirable route than the rail-and-lake, it is evident that no business would move under a higher rate. In other words, Chicago would not have been benefited by an advance in the rail-and-lake rate to St. Louis, the only effect being to divert the small amount of business which now moves over that route to the other available routes. We do not feel, therefore, that if this advance is justifiable upon other grounds it should be condemned as unlawful simply because the addition was made at Chicago without a corresponding increase at St. Louis.

This leaves the question upon the original complaint, under which the first objection seems to be that these advances, if they cover the cost of insurance and are made for that purpose, place that cost upon shippers of high-grade commodities instead of distributing it equally over different classes of freight. These advances are 3 cents upon the first and second classes, only 1 cent upon the third, fourth, and fifth, and a reduction of one-half cent upon the sixth class. Hence, if insurance were effected by the 100 pounds it is evident these increases would rest most heavily upon the higher classes. In point of fact, insurance is based upon value, the cost increasing with the amount insured. Since commodities shipped under the higher classes are usually much more valuable per 100 pounds than those shipped under the lower classes, it does not necessarily follow that an addition of 1 cent upon class 4 may not be equivalent in cost of insurance to an advance of 3 cents upon class 1. The rate applicable to class 6 was reduced, and this class therefore bears no part of the cost of insurance, while obtaining certain benefits therefrom. But with respect to the other classes this claim of the complainants could only be sustained by an examination in detail of the value of the different articles actually moving under this tariff.

Wyman, Partridge & Company, whose firm name heads the list of complainants, shipped during the season of 1907 goods of the value of 13 I. C. C. Rep.

\$3,000,000 by this route, and the value of the shipments of Marshall Field & Company, of Chicago, represented by the intervening association, was \$12,000,000 for the same period. Many small shipments move, however, by this route, and while the large shipper finds no difficulty in securing his own insurance the small shipper would prefer to have that matter attended to by the railway without action upon his part. If the shipper obtained through this insurance taken out by the carrier proper protection without material increase of expense to him, we think the present arrangement would be better than the old practice under which each shipper procured his own insurance.

The representative of Wyman, Partridge & Company testified that the advance in transportation charges exceeded by about 15 to 20 per cent the cost of insurance. He also stated that he would not seriously object to the advance in rates provided the protection obtained under the insurance effected by the carrier could be relied upon. His company felt that it could not be and actually expended some \$2,500 in obtaining marine insurance during the season of 1907, notwithstanding that such insurance was also provided by the transportation company. The serious question, therefore, is whether this rate, embracing the cost of insurance, is one proper to be tendered the public.

When the shipper himself effects his own marine insurance he receives a policy which states the terms and conditions upon which that insurance is placed. If a loss is not paid he has a contract upon which he can bring suit and he may select such insurance company that this suit can be brought in the state of his residence.

There is the greatest uncertainty just what protection the shipper secures under the arrangement which is attacked by this proceeding. The rate is a joint through rate applicable over both the rail and the water line. Undoubtedly, these carriers might, if they saw fit, issue bills of lading which would make them responsible for loss by peril of the sea. Under such a contract for transportation the carrier would stand responsible for loss upon the water, would thereby acquire an insurable interest in the goods as against such loss, and might take out marine insurance for its own benefit. In case of loss it would be liable to the shipper and would look for indemnity to the insurance company.

But such is not the contract which these defendants make with their shippers. As already said, they may exempt themselves from those perils of the sea which are not due to their own negligence, and without exception they do this by the terms of the bills of lading which are issued. They are not, therefore, liable as common carriers for loss upon the water not due to the negligence of the water

carrier. What they undertake to do is to procure insurance which shall indemnify not the carrier but the shipper against such loss.

The testimony does not show clearly what contract of insurance is executed. It seems to be a general policy upon the cargo for the benefit of whosoever may be interested. The name of no shipper is specified, the value of no invoice is known, the value of the entire cargo is not known and can not be known. The shipper has no information as to the company in which the insurance has been placed, nor as to the nature of the policy which has been taken out, nor as to the conditions which he must perform in order to perfect his claim in the event of loss. If loss occurs he knows not whom to sue nor where to sue, and the company may be one upon whom no service can be obtained without going into some foreign jurisdiction at great expense.

We do not feel that shippers should be forced to rely upon this sort of an undertaking for protection. Without doubt these carriers might, if they saw fit, as already suggested, contract to indemnify the shipper against loss due to perils of the sea. In such event the carrier itself would become the insurer and the shipper would require no additional insurance. It would be entirely immaterial to the shipper whether the carrier did or did not protect itself by insurance against possible loss. This kind of a rate these carriers might have established and they might with propriety have made a somewhat higher charge than was imposed under the old tariff where the shipper himself was obliged to incur the expense of this marine insurance.

If the carrier elects, as it undoubtedly may, to exempt itself from liability for perils of the sea, then we think the shipper should be left free to place his own insurance as he sees fit. Such insurance under that kind of a transportation contract is no part of the transportation service. The right of the carrier to effect this insurance for the benefit of the shipper without authority is doubtful; and assuming the right to exist, the justice of forcing upon the public, at its expense and against its protest, an arrangement of this kind is still more doubtful. In our opinion, unless the railway sees fit to assume these perils of the sea it should tender to the public a transportation contract which leaves shippers free to arrange for their own marine insurance.

It has already been noted that Wyman, Partridge & Company took out insurance for which they paid some \$2,500 during the season of 1907, acting in this respect precisely as though no insurance had been effected by the railway. It further appeared that in one or two cases large shippers held the written guaranty of the line which they patronized that loss upon the water should be made good by the carrier. It is needless to observe that serious discrimination

might result where one shipper held this sort of a guaranty while the general public had no similar assurance.

The defendants sought on the trial to justify these advances by increased cost of operation, and introduced testimony tending to show that the expense of handling this westbound traffic was greater during the year 1907 than it was during the year 1906. From this they argued that even if the shipper feels obliged to effect his own insurance in the future as in the past he should still pay the higher charge.

When this rate was advanced many of the defendants stated that the advance had been made for the purpose of covering the cost of insurance. Several of the answers take the same ground. While we must give due weight to this claim of the defendants and the evidence which sustains it, the whole record suggests that it was an after-thought required by the necessities of the defense rather than by the necessities of the carriers.

It fairly appears that the carriers can effect this insurance in the manner they do much cheaper than it has been purchased in the past by shippers acting individually, and also that the insurance thus obtained would afford adequate protection to the carrier against loss from perils of the sea and perhaps, to some extent, against its liability as a common carrier. The present arrangement is therefore to the advantage of the carrier. In the past this insurance has cost the shipper something, and he can well afford to pay a somewhat higher rate if he obtains the same protection from the carrier which he has previously enjoyed from the insurance company. The advances in rate amount to something more than the saving in insurance, but, under all the circumstances, we do not think that it would be unreasonable to impose this additional burden; in other words, we should feel satisfied to leave these present rates in effect provided the carrier did in fact extend to the shipper that protection against those perils of the sea which was formerly secured by his insurance, and which he is supposed to pay for in these advanced rates.

We do not think that the present arrangement upon the part of the carriers gives him any protection upon which he is bound to rely. Therefore it adds nothing to the value of the service to him and affords no justification for the advance. Since the justification for the rate fails, the rate itself, under present conditions, must be condemned. Existing rail-and-lake rates, in cents per 100 pounds, for the following classes are from New York:

To—	Class 1	Class 2	Rule 25	Class 3	Rule 26	Class 4	Class 5	Class 6
Chicago.....	62	54	45	41	33	30	25	21
Minneapolis.....	83	72	60½	54	43	38	32	26

In our opinion these rates are excessive and ought not to exceed for the future, in cents per 100 pounds, the following:

To—	Class 1	Class 2	Rule 25	Class 3	Rule 26	Class 4	Class 5	Class 6
Chicago.....	59	51	43	40	32	29	25	21½
Minneapolis.....	50	60	50	53	42	37	32	26½

No order will be made until May 1, 1908. An order will then be issued putting in the reduced rates above named, unless the defendants have previously tendered a contract of shipment under which the shipper receives the same protection which he has formerly had under his policy of marine insurance, and make the necessary changes in their tariffs, if any are required.

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No. 1127.

COSMOPOLITAN SHIPPING COMPANY

v.

HAMBURG-AMERICAN PACKET COMPANY; NORTH GERMAN LLOYD STEAMSHIP COMPANY; WILSON (HULL) LINES, AND SCANDINAVIAN-AMERICAN LINE.

Submitted January 8, 1908. Decided March 9, 1908.

1. Complaint in this case alleges that defendant steamship companies transport traffic under through bills of lading between inland points of the United States and foreign ports and are thereby subject to the jurisdiction of this Commission; that such defendants have made an arrangement for the pooling of eastbound export traffic moving by rail to Atlantic ports and thence by steamship lines to points in Denmark, Sweden, Norway, Finland, and German points on the Baltic; that this "Baltic pool" arbitrarily determines the ultimate rates from such inland points of the United States to such foreign ports via the North Atlantic ports; and that the Hamburg-American Packet Company maintains a monopoly of westbound and eastbound traffic forwarded on local and on through bills of lading between Germany and other continental countries and inland cities of the United States. The prayer is that the Commission declare the "Baltic pool" to be an illegal pooling of freights under the act, that the monopoly of the Hamburg-American Packet Company be declared unlawful, and that general relief be granted. To this complaint defendants demur, on the grounds (1) that this Commission has no jurisdiction of the subject-matter, or power to proceed against defendants, and (2) that the complaint sets forth no matter which is cognizable by this Commission, or which it has been given authority to remedy. *Held*, That, for reasons stated in the opinion, the demurrer will be sustained and the complaint dismissed.
2. This Commission has no jurisdiction as to shipments moving from ports of the United States to a foreign country not adjacent when such shipments are not carried by rail, or by rail and water, from an inland point of origin to a port of transshipment. An inland movement of export or import traffic is a condition precedent to the attaching of jurisdiction.
3. The jurisdiction of this Commission is not to be determined by anything other than the language of section 1 of the act, and in this section is found a clear distinction drawn between interstate commerce and foreign commerce to a country not adjacent to the United States; and this distinction saves such foreign commerce from the effect of that provision of the section as to continuous carriage beyond the American seaboard.

4. The Commission may regulate interstate traffic, whether by rail or by a combined rail-and-water route, from point of receipt to point of delivery; but the Commission in its control over foreign commerce is limited to the regulation of such traffic, whether by railroad or by a combination of rail and water carriers, from and to the point of transshipment.
5. The act provides no machinery by which its provisions can be enforced as to trans-Atlantic steamship lines; the absence of such provision can be explained only by accepting the interpretation that the Commission has no jurisdiction in the premises.
6. The pooling of traffic by water carriers is plainly a matter over which this Commission has no jurisdiction.
7. A rail carrier may control, or connect with, a line of steamships engaged in foreign commerce, with which it may interchange business as freely as with another rail carrier, and it may quote a combined rate for the through movement, the agent of the railroad company acting as the agent of the steamship company in so doing.
8. The act provides that this Commission shall exercise jurisdiction over the inland portion of the haul, either to or from the foreign country; and it must logically and necessarily follow that the rate which must be filed with the Commission under section 6 of the act is the rate governing such movement. On foreign commerce the rate to be published with this Commission should be the rate to the port and from the port—an open rate, which any who desire to do so may use with equal advantage.
9. This position does not conclude the Commission against an examination into the relation which exists between the rail carriers of the United States and the defendant water carriers and condemnation of such arrangement, if the rail carriers to the seaboard are by any means whatsoever disobeying any provision of the act or omitting to comply with its every requirement.

Ward W. Pierson and Frank L. Neall for complainant.

John C. Spooner, William G. Choate, and Harrington Putnam for defendants.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The Commission is petitioned in this case to restrain, control, and regulate the practices of the trans-Atlantic steamship lines named as defendants.

The complainant, a New Jersey corporation, operates a line of steamships out of the port of Philadelphia to Copenhagen, Denmark; Rotterdam, Holland, and Leith, Scotland. The defendants are ocean carriers between various ports of the United States and foreign ports; the Hamburg-American Packet Company transporting traffic between Boston, New York, Philadelphia, Baltimore, Norfolk, and Newport News, and Hamburg, Germany; the North German Lloyd Steamship Company between New York and Philadelphia and Bremen, Germany; the Wilson (Hull) lines between Boston and New York and Hull, England; the Scandinavian-American line between Boston and New York and Copenhagen, Denmark.

It is alleged in the complaint (and this allegation is the foundation of the present proceeding) that the defendants transport traffic under 13 I. C. C. Rep.

through bills of lading between inland points in the United States, such as Chicago, St. Louis, Kansas City, Omaha, Minneapolis, Duluth, Cleveland, and the foreign ports whereat such steamship lines touch, and by so doing have established an arrangement for continuous carriage or shipment which subjects such steamship lines to the jurisdiction of this Commission, under the language of section 1 of the act to regulate commerce, which reads:

The provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States, or the District of Columbia, or from one place in a territory to another place in the same territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.

Based upon this allegation of jurisdiction the complainant proceeds to set forth those acts of the defendants which it is averred are obnoxious to the act to regulate commerce, and chief of these is the averment that the defendants have made and entered into an arrangement for the pooling of eastbound export traffic moving by rail to Atlantic ports and thence by steamship line to points in Denmark, Sweden, Norway, Finland, and German points on the Baltic. This "Baltic pool," as it is termed, is said to arbitrarily determine the ultimate rates for forwarding merchandise on through and on local bills of lading from the cities of Chicago, St. Louis, Kansas City, and other points in the United States via the North Atlantic ports of the United States to European points reached by the steamships of the defendants, and to divide such freight traffic on the basis of the following percentages: Hamburg-American Packet Company via Germany, 56 per cent; North German Lloyd via Germany, 17.5 per cent; Wilson (Hull) Line via England, 2.5 per cent; Scandinavian-American Line direct to Denmark, 24 per cent.

The complainant then alleges:

That merchandise originating in said interior cities of the United States destined to such foreign points is transhipped at the said North Atlantic ports aboard steamers

of the defendant, according to the port, and carried thence to foreign destinations, either directly when reached by the water carrier or in connection with other carriers; that the volume of traffic assembled in each of these seaports of the United States is so distributed as to insure each of the respective members of the pool their arbitrarily agreed upon percentage of the traffic actually moved; that these percentages are regulated and controlled in New York by means of frequent reports and comparisons of records; that such an apportionment involves the determination, both as to kind and amount of traffic originating in western cities which is to be forwarded to each of said ports upon the Atlantic seaboard; that when a member of the pool is doing more than its apportioned share of the business, shippers are instructed to send their goods to ports from whence other lines make their sailings; that in this way freight shipments are arbitrarily manipulated so as to put out of business the ocean freight service of a line not belonging to said pool; that such pool results in unjust discrimination between different of the American ports and against complainant and American owners of American boats, unduly prefers foreign boat owners, and threatens to annihilate the American-controlled shipping companies that attempt to compete for such foreign traffic.

A further allegation is that the Hamburg-American Packet Company maintains and manipulates a monopoly of westbound and east-bound traffic forwarded on local and on through bills of lading between Germany and other continental countries and the inland cities of the United States.

It is the prayer of the petition that the Commission declare the "Baltic pool" to be an illegal pooling of freights under the act, and that the monopoly of the Hamburg-American Packet Company be declared unlawful as tending to decrease competition, and therefore to the illegal advancement of transportation charges; and that the Commission prescribe such rules and regulations in lieu of those now existing over defendants' lines as will in future operate to prevent the continuance of the exactions, unjust discriminations, and undue and unreasonable prejudice and disadvantage to the complainant, to other shippers, and to said inland points in the United States, as are alleged and may be found to obtain.

To this complaint the defendants demur, (1) that it appears upon the face of the said petition that this Commission has not, under the laws of the United States, jurisdiction of the subject-matter thereof, or power to proceed thereunder against the said defendants or either thereof; (2) on the ground that said petition sets forth no matter or matters which are cognizable by this Commission, or which it has been given authority to remedy or relieve against.

There is thus raised for determination the jurisdiction of this Commission over ocean carriers engaged in the transportation of property which moves on through bills of lading from points in the interior of the United States to foreign countries not adjacent to the United States.

It is clear that under the plain reading of the act no basis exists for the contention, nor is the contention made by complainant

here, that this Commission has jurisdiction as to shipments moving from ports of the United States to a foreign country not adjacent when such shipments are not carried by rail, or by rail and water, from an inland point of origin to a port of transshipment. An inland movement of export or import traffic is a condition precedent to the attaching of jurisdiction. There may be an unlimited volume of all-water commerce from the American seaboard to the European seaboard, but over such commerce, or the carriers engaged therein, this Commission has no regulating power whatsoever so long as the shipments originate at the seaboard and are not transshipped to the ocean carriers. This exemption appears of great significance in the construction of the law, for the question at once is raised in the mind: Why should Congress distinguish between that foreign commerce which originates at, or is destined to, a seaboard city and that which is sent from, or taken to, an interior point? The answer is found in the fact that Congress has not sought to exercise control over all-water carriage, either transoceanic or inland. The act to regulate commerce arose out of the unjust and discriminatory practices of the rail lines; and all other carriers, when entirely independent thereof, were exempted from the restrictions imposed by this act and denied its benefits. Indeed, it may be said that the primary purpose of the law, judging from the reports and debates of Congress prior to and succeeding the enactment of the act of 1887, was to regulate rail carriers; but for the purpose of successful regulation of these it was found necessary that water carriers operated in connection with rail carriers should be made subject to the same regulating power. Accordingly it has been the uniform interpretation of the law that an all-water carrier engaged in carrying freight originating at New York or at New Orleans may engage in such traffic between such ports without filing its rates with this Commission, and so may the steamships plying between Seattle and San Francisco, or the carrier which transports freight from Duluth to Chicago on the Great Lakes, or the river carrier from Memphis to New Orleans; but if such water carriers are controlled or managed by the same corporation as controls or manages a rail line, or if between a rail and a water line there is an arrangement for continuous carriage, then such water line becomes subject to all the provisions mandatory and prohibitory of the act to regulate commerce.

The complainant now asks an extension of this principle so as to govern foreign commerce when such traffic is carried by rail to the seaboard and thence by steamship to European ports, it being the theory of the complainant's case that because a through bill of lading is given at the inland point where the freight is received, upon which the traffic moves to the point of foreign destination, all the

carriers participating in such through bill of lading are parties to an "arrangement for continuous carriage," and therefore that such transportation and the carriers therein engaged are subject to all the regulative provisions of the law and are as completely under Federal control as if they were rail and water carriers within the United States engaged in interstate business. To this point are cited a number of decisions by the United States Supreme Court and other tribunals in which it has been held that by giving or recognizing a through bill of lading upon interstate traffic and by other acts or practices a railroad lying wholly within a state becomes an interstate carrier and amenable to Federal control. *Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 184; *United States v. Wood*, 145 Fed. Rep., 405; *Milwaukee Chamber of Commerce v. Flint & Pere Marquette Ry. Co.*, 2 I. C. C. Rep., 553; *In re Through Routes and Through Rates*, 12 I. C. C. Rep., 163.

The opinions in these cases, however, must be read in the light of the questions necessarily involved in the decisions rendered, and the full significance of these decisions touching the immediate question is that the determination of the question whether a carrier transporting interstate traffic does so as a state carrier or as an interstate carrier may be arrived at by an analysis of the manner in which the traffic is handled, and that through billing is one evidence of an arrangement for such continuous carriage as brings the lines therein participating under the jurisdiction of the Interstate Commerce Commission. It would be a far cry, indeed, to say that a railroad in France which makes itself part of a through route from Chicago to Paris becomes subject to the interstate-commerce act because a railroad in Georgia, by accepting through billing of interstate commerce, has been held to be a carrier described in section 1 of the act to regulate commerce. Yet such would be the logical conclusion of complainant's contention were all export and import commerce moving by rail and water governed by the same rule as applies to interstate traffic; for if through billing determines jurisdiction, then all carriers participating therein become subject to regulation by Congress.

The jurisdiction of this Commission is not to be determined by anything other than the language of section 1 of the act, and in this section we find a clear distinction drawn as between interstate commerce and foreign commerce to a country not adjacent to the United States; and this distinction, in our opinion, saves such foreign commerce from the effect of that provision of the section as to continuous carriage beyond the American seaboard. The Commission may regulate interstate traffic, whether by rail or by a combined rail-and-water route, from point of receipt to point of delivery; but the Commission in its control over foreign commerce is

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limited to the regulation of such traffic, whether by railroad or by a combination of rail and water carriers, from and to the point of transshipment.

From a careful reading of section 1, inartificially drawn as it is, the legislative intention is educed to bestow upon the Interstate Commerce Commission the power to regulate in a certain prescribed manner and as to certain and definite matters (and only as to certain described classes of carriers) (1) all interstate commerce, (2) even when through an adjacent foreign country, and (3) commerce to an adjacent foreign country, (4) intraterritorial transportation, and (5) transportation of property shipped to or from a port of the United States where it is transshipped to or from a foreign country—whether such carriage as to such commerce be by an all-rail route or by an arranged rail-and-water route. The language of this section as to foreign commerce, it will be remembered, is:

The provisions of this act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water (when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States, * * * and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

The construction to be placed upon this language is that it gives to this Commission jurisdiction only over the inland portion of the shipment, and for these reasons:

(1) Such construction was given to the act by the Senate committee which presented the original act of 1887.

(2) The act itself elsewhere defined the carriers engaged in interstate commerce to which the act was made applicable.

(3) Such construction is alone consistent with other provisions of the act.

(4) The decisions of the courts lean toward such construction.

(1) The chairman of the Senate committee, in presenting the original act to the Senate in the year 1886, used these words:

While the provisions of the bill are made to apply mainly to the regulation of interstate commerce, in order to regulate such commerce fairly and effectively it has been deemed necessary to extend its application also to certain classes of foreign commerce which are intimately intermingled with interstate commerce, such as shipments between the United States and adjacent countries by railroad, and the transportation by railroad of *shipments between points in the United States and ports of transshipment or of entry* when such shipments are destined to or received from a foreign country on through bills of lading. To avoid any uncertainty as to the meaning of these provisions in regard to what may be at the same time in some instances state and foreign commerce, it is expressly pro-

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vided that the bill shall not apply to the transportation of property wholly within one state and not destined to or received from a foreign country.

This last sentence refers to the concluding sentence in the first paragraph of section 1:

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.

By this language Congress sought to certainly exclude purely state traffic and to as certainly include foreign traffic even when its movement was wholly within a state. Therefore the rates on cotton moving for export from Dallas, Tex., to Galveston, although the movement is wholly within a state, are subject to Federal regulation. And, likewise, machinery moving from Syracuse to New York City upon through billing to a European point comes under the control of Federal authority rather than state authority, because it is foreign commerce.

(2) In the act of 1887, there was authorized and provided a method of procedure, by injunction, whereby the enforcement of the provisions of section 6 touching the levying of tariffs, etc., might be secured, in these words:

And the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several states and territories of the United States, or between the United States and adjacent foreign countries, *or between ports of transshipment and of entry and the several states and territories of the United States, as mentioned in the first section of this act*, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

In the language placed by us in italics we see a clear definition of the meaning of that portion of section 1 involved in this case. The Commission might enjoin a carrier from transporting freight "between ports of transshipment and of entry and the several states and territories, as mentioned in the first section of this act."

The wording of section 1 as to foreign commerce remains to-day precisely as it was in 1887, and we must accept the definition found in section 6 of the original act as indicating the intention of Congress as to the jurisdiction which was bestowed upon this Commission. This provision of the law was not reenacted in the Hepburn Act of 1906, owing, no doubt, to a general revision of those features of the old act respecting the method of enforcing compliance with the law, some of the new amendments being incorporated in the Hepburn Act, and others in the Elkins Law. The omission of this provision, therefore, we do not take as indicating that thereby any extension of the jurisdiction of the Commission was intended.

And so throughout the entire law, read line by line, we find that every provision by which discrimination may be punished or rebating or any other evil at which the law is aimed, assumes that the act condemned shall have been committed within the United States, and the law takes no cognizance whatever of the possibility of applying it to common carriers or individuals who are outside of the jurisdiction of our courts.

While no doubt some of these same difficulties regarding the regulation of transoceanic commerce obtain also as to the enforcement of the law respecting commerce into and through adjacent foreign countries, nevertheless it is evident from the act that Congress had cognizance of such difficulties and sought to supplement its general provisions by other methods and devices applicable especially as to the interstate movement of traffic through such adjacent foreign countries. In section 6 of the original act, as well as of the present law, is to be found this provision:

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

It is to be noticed that the law here contemplates that responsibility attaches to the carrier within the United States, and by a means other than that which could be applied to a carrier wholly within our own borders attempts to secure obedience to the law. May it not reasonably be said that if Congress intended to bring trans-Atlantic carriers under the Commission's jurisdiction it would have sought by some device analogous to that applied to traffic through an adjacent foreign country, or by some different means, to control such extra-territorial carriers?

It is true that foreign ships entering our ports and here taking on traffic are for certain purposes within reach of court process; and Congress might, if so minded, subject such carriers to regulation within the limits which maritime law and international policy would permit. But can it be held in fairness under the commonest canons of legal construction that a statute containing the provisions we have quoted was drafted to cover, and was intended to govern, steamship lines owned, controlled, and operated from a foreign country even where such steamship lines make through arrangements for continuous carriage with domestic rail lines? If such was the intention

it must be confessed that Congress succeeded in presenting a piece of legislation to the world which is of singular and distinguished incompleteness.

4. The position is strongly urged by complainant that in the Import Rate Case, *Tejas & Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 197, the Supreme Court of the United States has held that the jurisdiction of this Commission extends over such water carriers when constituting part of a through route. The opinion is by Mr. Justice Shiras, who quotes the jurisdictional words of section 1 and then expresses the view of the court in these words:

It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (excepting commerce wholly within a State) as well that between the states and territories, as that going to and coming from foreign countries. In a later part of the section it is declared that "the term 'transportation' shall include all instrumentalities of shipment or carriage."

Having thus included in its scope the entire commerce of the United States, foreign and interstate, and subjected to its regulations all carriers engaged in the transportation of passengers or property, by whatever instrumentalities of shipment or carriage, the section proceeds to declare that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

The significance of this language, in thus extending the judgment of the tribunal established to enforce the provisions of the act to the entire service to be performed by carriers, is obvious.

This language has been often quoted as indicating it to be the view of the Supreme Court that the Interstate Commerce Commission has jurisdiction over trans-Atlantic steamship lines. From such examination of the act as we have herein made it is apparent, however, that the act is not necessarily so broad as is indicated in this opinion. The question which the court was called upon to consider in the Import Rate Case was whether or not it was the duty of this Commission to take into consideration the possible routes by which traffic from Liverpool could reach San Francisco, and whether a rail carrier within the United States, in view of possible water competition, could be justified in making a different rate for the inland movement of foreign commerce from that which governed as to purely domestic traffic. And the opinion may not properly be cited as authority to any other question.

This is pointed out by Judge Sanborn in the case of *United States v. Colorado & Northwestern R. R. Co.*, 157 Fed. Rep., at page 329:

The court was considering only the relation of the circumstances, conditions, and rates of transportation of foreign commerce to the circumstances, conditions, and rates of transportation of interstate commerce. * * * The statement that Congress had in view the whole field of interstate commerce when it passed this act is far from an assertion, and could never have been intended to be a declaration that

Congress had regulated, or had intended by that act to regulate, every carrier engaged in interstate commerce within its regulating power, for that was obviously not the fact.

That it was not the Supreme Court's opinion that this Commission is vested with the same jurisdiction over ocean carriers that it has over inland rail carriers seems to be borne out by that sentence of the opinion which reads as follows:

Nor was there any allegation, evidence, or finding, in the present case, that the Texas & Pacific Railway Company has failed to file with the Commission copies of its joint tariffs, showing the joint rates from English ports to San Francisco, nor that the company has failed to make public such joint rates in such manner as the Commission may have directed.

It is to be inferred from this sentence that the Supreme Court did not regard it as obligatory upon the ocean carrier to publish the joint tariff showing the through rates from English ports to San Francisco by way of New Orleans, but that the only carrier which could be compelled to conform to the requirements of the act was the inland carrier, the railway. And in the dissenting opinion of Mr. Justice Harlan, who comments upon the language of section 1, we find this pregnant statement, which is not in contravention of any interpretation given by the majority of the court:

From this section it is clear that the Texas & Pacific Railway Company is, and that the ocean lines connecting with that company are not, subject to the provisions of the act.

A full reading of the majority opinion in this case fails to reveal any holding or doctrine that ocean lines engaged in foreign commerce are subject to the provisions of the act. The statement by Mr. Justice Harlan, therefore, stands as the only definitive construction of the jurisdictional language of the act which has yet been given by the Supreme Court.

And to this same point may be cited the case of *Armour Packing Co. v. United States*, 153 Fed. Rep., 1, in which the United States circuit court has held that in the case of a shipment from an interior point within the United States to a European country the inland movement from the place of origin in the United States to the port of transshipment is that as to which this Commission may assert its power.

The act is general, comprehensive, includes within its express terms all transportation of property in foreign commerce from the place of origin in the United States to the port of transshipment, and it contains no exception of such carriage under through bills of lading.

Mr. Judson in his work on interstate commerce, after quoting from the Import Rate Case, feels free to conclude that "the jurisdiction of the Commission extends to only that part of the through import or export rate which applies to the inland proportion received by the carrier."

Therefore, from the language of the act itself and the evident purpose of Congress in passing the act, and from the decisions of the courts, meager and generally unsatisfactory as they are, we are inevitably drawn to the conclusion that this Commission has no jurisdiction over the trans-Atlantic steamship lines herein involved, even though they may be parties to a through arrangement for continuous transportation in connection with a railroad within the United States. On foreign commerce to a nonadjacent country the jurisdiction of this Commission over the carriers therein engaged ends at the seaboard.

For the reasons given the demurrer will be sustained and the petition dismissed. The position here taken, however, does not conclude the Commission against an examination into the relation which exists between the rail carriers of the United States and the defendant water carriers and condemnation of such arrangement if the rail carriers to the seaboard are by any means whatsoever, or because of any reason advantageous to them and disadvantageous to the general public, disobeying any provision of the act to regulate commerce, or refusing, or omitting, to comply with its every requirement. The Cosmopolitan Shipping Company may bring before the Commission the rail carriers engaged in the transportation of such foreign commerce to and from ports of transshipment and subject them to investigation as to their methods of handling such business and the reasons therefor. If it is found that there is discrimination as between shipping points or points of transshipment in the United States on the part of these rail carriers, it is within the function of the Commission to correct such wrong.

Does it follow from the conclusion here reached that a rate can not be made from an inland point to a point of foreign destination? This is a problem outside the direct question involved in this case, but to the end that the full significance of the position of the Commission may be understood, it should properly be dealt with here.

The law designates certain tariffs which shall be filed with the Commission and publicly posted: (a) Tariffs showing rates on the carrier's own route; (b) tariffs showing rates on its own route and the route of any other carrier by railroad, by pipe line, or by water, when a through route and joint rate have been established; (c) tariffs showing separately established rates on through business when a through route has been established, but not a joint rate. These are the only rates which the law requires to be filed, and by their filing and posting these rates have validity and may be exacted by the carrier.

The courts and this Commission, for need of a better term, have from time to time designated a rate between a rail line and a trans-

Atlantic line as a "joint rate," but manifestly, if the act was not intended to apply to such ocean line, the "joint rate" which it may make with a rail line by combining the ocean rate which it charges with the rail rate which the railroad charges is not the "joint rate" to which the act was intended to apply. Such a rate should more properly be termed a through export or import rate.

It is permitted to two rail lines, or to a rail line and a water line under the jurisdiction of the act, to unite in a through route and make for the full journey or movement a joint rate. This rate is made by agreement; and it is not incumbent upon either carrier to publish the proportion or share of such rate which it receives. The law presumes that no public need exists for the public presentation of any other than the total rate. This joint rate may be changed only in accordance with the procedure fixed by law and after public notice of 30 days. The division of such rate may, however, be altered by the two parties at their pleasure, subject, of course, to filing such division with the Commission if called for. If, now, a joint rate of this same character were to be made between a rail line subject to the act and an ocean carrier not subject thereto, it would be within the power of the two to circumvent the law as to rebates and preferential rates to any degree desired. The rail line might charge the joint rate of its tariff, and yet, by legally altering from day to day its division of such rate, give to the ocean carrier an inequitable portion of its earnings wherewith to "induce" traffic. This the law was enacted to stop.

The Commission, not having been given control over the ocean carriers, can not compel observance of the law by such carriers, and if they so choose they may alter their rates at such times as they please or for such patrons as they please. Therefore the line must be drawn decisively between those carriers whose rates and practices this Commission can control and those which it can not control; and upon this line of reasoning it has been the consistent ruling of the Commission that "joint rates" can not be made between carriers subject to the act and those not subject to the act. *Wylie v. No. Pac. Ry. Co.*, 11 I. C. C. Rep., 145; *Cary v. Eureka Springs Ry. Co.*, 7 I. C. C. Rep., 286.

The "joint rate" referred to in section 6 is a "joint rate" made between two or more carriers all of whom are of the classes designated within section 1 as being subject to control and regulation by the Interstate Commerce Commission.

What is here said, however, is not founded upon the assumption that the act to regulate commerce takes from a common carrier any right which it enjoys at common law to contract freely with other

carriers, even though they may not be subject to the act to regulate commerce. Our purpose is to more clearly define the provisions of the law to which the inland carrier must conform in the handling of traffic destined to or from a foreign and nonadjacent country. Such rail carrier may control, or connect with, a line of steamships engaged in foreign commerce, with which it may interchange business as freely as with another rail carrier, and it may quote a combined rate for the through movement, the agent of the railroad company acting as the agent of the steamship company in so doing. An inland carrier may go into the foreign shipping business without contravening any provision of the act to regulate commerce; nor is there anything in such statute which denies to a rail carrier the right to quote a rate from an inland point to a foreign destination over its own through route or by any other route. But as to such carriers engaged in foreign business, the rail carrier has, so far as this law is concerned, a purely contractual or proprietary relation, not a relation regulated or controlled in any manner by this act.

The Federal Government has said that this Commission shall exercise jurisdiction over the inland portion of the haul, either to or from the foreign country; and it must logically and necessarily follow that the rate which must be filed with the Commission under section 6 of the act is the rate governing such movement. On foreign commerce the rate to be published with this Commission should be the rate to the port and from the port—an open rate, which any who desire to do so may use with equal advantage. The publication of such rate does not in any manner limit the very valuable privilege of through billing. Such through billing should clearly separate the liability of the rail and the ocean carrier and show the published rate of the inland carrier. The routing of the freight, however, should remain with the shipper, and upon him may be imposed no greater charge to the port when his freight goes by one ocean line than by another, and this rate to the port the tariffs must disclose.

This ruling is the only one which is consistent with what seems to be the policy of the law, viz, that while restriction and control are essential as to the inland carriers of foreign commerce, the ocean carriers of such commerce should remain unrestrained and free. There is not to-day, and never has been, such a thing as stability of rates upon the water. Perhaps it is not desirable that there should be. The ocean is a highway free to all. No franchise is needed to sail the seas, nor is the establishment of a line of ships founded, either in law or in economics, upon the theory of a public-serving monopoly which underlies the relation of the railroad to the state. It may well be, therefore, that without regulation, and by reason of natural competitive condi-

tions, the public will be best served, and in the end treated more equitably, by leaving the water carriers to foreign lands entirely unhampered by legal restrictions such as the people of this and other lands have found it necessary to impose upon the railroads. Under the ruling here made the fluctuation in the total through rate charged from an inland point in the United States to a European or Asiatic country will fall where in fact the fluctuation is, at the seaboard. The competition in rates will thus manifest itself where the competition really exists, and where the law presumes it will unrestrictedly continue, viz, where the ships bid against each other for cargo.

18 I. C. C. Rep.

No. 1175.

MERCHANTS TRAFFIC ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY;
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY;
MISSOURI PACIFIC RAILWAY COMPANY; DENVER & RIO
GRANDE RAILROAD COMPANY, AND UNION PACIFIC
RAILROAD COMPANY.

Submitted March 14, 1908. Decided March 16, 1908.

1. While defendants' rate on camera and camera stands from St. Louis to Denver is high, it is not so excessive as to warrant interference.
2. Defendants' rate applied to shipments of motorcycles from St. Louis to Denver should not exceed that imposed upon bicycles between the same points.

W. B. Harrison for complainant.

H. T. Rogers for Atchison, Topeka & Santa Fe Railway Company.

Henry McAllister for Chicago, Burlington & Quincy Railroad Company.

E. B. Peirce, J. C. Helm, and C. H. Haines for Chicago, Rock Island & Pacific Railway Company.

J. W. Preston for Missouri Pacific Railway Company.

E. N. Clark for Denver & Rio Grande Railroad Company

F. C. Dillard and Dorsey & Hodges for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant is an association of merchants who are located at Denver, Colo., and interested in the transportation of merchandise to and from that city. The defendants are the Atchison, Topeka & Santa Fe Railway Company, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, the Missouri Pacific Railway Company, the Denver & Rio Grande Railroad Company, and the Union Pacific Railroad Company.

The complaint is that the rates of the defendants for the transportation of cameras and camera stands from St. Louis, Mo., to Denver, Colo., of \$3.70 per 100 pounds, and of bicycles and motorcycles of \$3.70 and \$6.47½ per 100 pounds, respectively, are excessive. The defendants admit that the rates are correctly stated, but deny that they are unreasonable.

Cameras and camera stands are classified under the Western Classification as double first class. As proof that this was unreasonable the complainant relied upon the fact that in Official Classification territory these articles were classified as first class. Its representative urged that if these articles could move from Rochester, N. Y., where they are most largely produced, to St. Louis, a distance of over 900 miles, for 61 cents, it was unreasonable to charge \$3.70 for transporting them another 900 miles, from St. Louis to Denver. The 61-cent rate from Rochester to St. Louis has been increased to 62 cents.

An examination of the Official Classification shows that the complainant erred in the assumption as to the rating given these articles under the Official Classification. Cameras are rated as first class in Official Classification territory when less than 50 cents per pound in value; when exceeding this value they are classified as three times first class. The great bulk of cameras exceed the 50-cent limit and therefore take in Official Classification territory three times the first-class rate. They are bulky, somewhat liable to injury in transportation, and the cost of carriage enters but slightly into the cost of the article itself.

Camera stands are also double first class under the Western Classification when shipped set up. If knocked down and tied in bundles, they take one and one-half times first class; but if knocked down and boxed or crated, they take first class. They are, especially when set up, very light and bulky freight. While the rate applied by the defendants to the transportation of both cameras and camera stands is high, we do not regard it as so excessive as to warrant our interference, and this branch of the complainant's case is not sustained.

When this complaint was brought the rate on bicycles from St. Louis to Denver was \$3.70 per 100 pounds, or double first class, but since the filing of the complaint that rate has been reduced and is now one and one-half times first class in less than carloads, and first class in carloads. This tariff had been filed at the date of the hearing and the complainant stated that in its opinion the rates named were reasonable, and asked, if the tariff became effective, that the complaint be dismissed as to bicycles.

The rate on motorcycles is still \$6.47½ from St. Louis to Denver, or three and one-half times first class. The motorcycle, which is in effect a bicycle provided with a small gasoline motor, is crated much like a bicycle, only in a more substantial manner, and occupies when crated a space 8 feet long by 3 feet high and about 10 inches wide, weighing from 175 to 200 pounds, and valued at about \$150. A bicycle is about the same length and height but not quite as wide. It weighs from 40 to 50 pounds and is worth approximately \$30. Neither the bicycle nor the motorcycle are, when shipped, peculiarly liable to damage. The motorcycle loads much more heavily than the bicycle and is, from a traffic standpoint, more desirable freight. From the shipper's standpoint it is a more valuable article and ought perhaps to pay more in proportion to the cost of the service to the carrier.

On the whole we think the rate applied to the shipment of motorcycles should not exceed that imposed upon bicycles. We are of the opinion that the present rate from St. Louis to Denver upon these articles of \$6.47½ per 100 pounds is excessive, and that the rate ought not to exceed, for the future, one and one-half times the first-class rate from St. Louis to Denver in less than carload lots, and the first-class rate in carloads.

An order will issue accordingly.

13 I. C. C. Rep.

No. 1384.

WILLIAM LARSEN CANNING COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY;
PERE MARQUETTE RAILROAD COMPANY, AND JUD-
SON HARMON, RECEIVER THEREOF; HOCKING VAL-
LEY RAILWAY COMPANY, AND CINCINNATI & MUS-
KINGUM VALLEY RAILROAD COMPANY.

Submitted March 20, 1908. Decided April 6, 1908.

1. Complainant directed that its shipments of two carloads of canned vegetables from Green Bay, Wis., to Washington, Ohio, move via a certain route over which there was no joint through rate, and the sum of the locals was applied. The goods might have been shipped by complainant between these points over a route having a joint rate less than the sum of the locals. *Held*, That the initial carrier was bound to observe the instructions of the consignor in this case. It was also bound to collect the published rate applicable to the designated route and entails no liability under the law for so doing.
2. No evidence was introduced tending to show that the rate charged and collected was unreasonable and unjust *per se*. Complaint dismissed.

Austin C. Larsen for complainant.

Samuel A. Lynde for Chicago & Northwestern Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This is a complaint that the charge by defendants of \$161.82, or 26½ cents per 100 pounds, for the transportation of two carloads of canned vegetables, aggregating 61,064 pounds, from Green Bay, Wis., to Washington, Ohio, is unreasonable and unjust to the extent of 6½ cents per 100 pounds. Reparation is asked.

Complainant in August, 1906, directed that the shipments in question move between the points named via the Chicago & Northwestern, Pere Marquette, and Hocking Valley railroads. At that

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time no joint rate was in effect over this route, and the rate collected was the sum of the regularly established locals applicable to such shipments. The law requires carriers in every case to charge the published rate. Under the circumstances the defendants had no option. They had to collect and retain the charges they did.

It appears that at the time the shipments moved there was a joint through rate from Green Bay to Washington of 20 cents per 100 pounds, via the Chicago & Northwestern, Hocking Valley, and Cincinnati & Muskingum Valley railroads. The goods might have been shipped by complainant to their destination at a rate of 20 cents if the above route had been selected. If the complaining company had delivered the traffic to the Chicago & Northwestern at Green Bay without instructions with respect to routing, it would have had to send it over the cheapest route or been liable in damages.

The company was bound to observe the instructions of the consignor in this case; it was also bound to collect the published rate applicable to the designated route and entails no liability under the law for so doing.

No evidence was introduced tending to show that the rate charged and collected was unreasonable and unjust *per se*, and therefore the complaint will be dismissed. An order will be entered accordingly.

13 L. C. C. Rep.

No. 1103.

COMMERCIAL CLUB OF DULUTH

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY, AND CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY.

Submitted February 12, 1908. Decided April 6, 1908.

1. By their tariffs defendants offer free storage in transit at Duluth, Minn., or Superior, Wis., on both east and west bound lake freight during the closed season of navigation. The practice is for inland shippers to bring their traffic to the warehouses at such ports before the close of navigation, where they are held in free storage by defendants until ordered forward by rail at the balance of the through rate from eastern points of origin. The Duluth merchants, having their business houses at the point where the storage is given, are compelled to pay storage and also dockage and switching charges. Complainant alleges that this business deprives Duluth of its advantage of location at the head of the lakes and operates to transfer such advantage to inland points. It appears that the privilege is open to all shippers alike and that the practice is not confined to defendants, but is forced by competition of other lines operating through other lake ports. *Held*, That the record in this case does not at this time justify condemnation of a practice in which so many carriers and shippers not parties to the record are interested.
2. The fact that the privilege of free storage is more valuable to inland merchants than to merchants at lake ports does not necessarily make the privilege unlawful. The position of complainant is that the privilege takes away from the lake ports an advantage of its location; but the better position seems to be that the inland jobbing centers, by reason of their location at points where the competition of several lake ports operates, also have advantage of location, one result of which is seen in the effect of this privilege of free storage.

S. F. Harrison for complainant.

Emerson Hadley for Northern Pacific Railway Company.

J. D. Armstrong for Great Northern Railway Company.

H. M. Pearce for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant is a voluntary association composed of firms and individuals doing business at Duluth, Minn., and organized for the

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purpose of advancing the commercial and jobbing interests of that city. Defendants are carriers subject to the act to regulate commerce.

The prayer is that defendants be ordered to cease giving free storage to shipments of merchandise moving from Buffalo and other eastern shipping points by boat line to Duluth or Superior, Wis., and thence by rail to destination beyond Duluth. By their tariffs defendants offer storage in transit at Duluth on both east and west bound shipments of merchandise. The tariff of the Great Northern Railway, which is typical of the tariffs of all the defendant carriers, provides:

This company is provided with dock warehouse at port of Superior, Wis., in which a limited amount of storage in transit can be given on shipments of east and west bound lake freight. Such freight is to be consigned free to point of destination via this line or connections with which we interchange at points other than Superior. No charge will be made for such storage privilege.

The railway does not assume fire risks on shipments stored under this arrangement. Change of destination at Duluth or Superior is allowed without charge, it being provided that if the merchandise is delivered from the warehouse locally to Duluth or Superior the regular dockage and switching charge of the railway company shall be assessed.

It appears that jobbers of cement, nails, and certain other heavy commodities, doing business at St. Paul, also jobbers doing business at Duluth, have availed themselves of the privilege here offered. The practice is to bring a supply of a given commodity to the warehouse before the close of navigation. Shipments are ordered forward by rail from time to time during the winter, as business requirements may dictate. At the opening of navigation, which is the end of the period of free storage, the remaining portion of the stored commodity is forwarded by rail to the consignee. The consideration moving complainant to ask the Commission to forbid the carriers to give this privilege is as follows:

At the end of the free storage time, merchants doing business at St. Paul or Minneapolis may order goods remaining in the warehouse to be sent forward, and the same are transported by the railroad company at the balance of the through rate from eastern point of origin. Duluth merchants, however, at the end of the free storage time, receive the unsold remnant of their goods at the lake port, and are compelled to pay storage on goods so received for the time they have been in the warehouse, and also dockage and switching charges. That is to say, so far as the Duluth merchant ships goods out of the warehouse to interior customers during the winter he is on the same basis as the St. Paul or Minneapolis merchant; in receiving the unsold remnant of his stored goods,

however, he finds himself not able to use this privilege to as great advantage as his competitors who are at inland points. Complainant therefore takes the position that this privilege, as given, deprives Duluth of its advantage of location at the head of the lakes and operates to transfer such advantage to inland points.

It was urged in the complaint that less than carload shipments had been forwarded by defendants at carload rates. This contention was abandoned at the hearing, however, and no objection of discrimination in the enforcement of the rule remains, the claim being that the rule itself is discriminatory and unfair to merchants doing business at Duluth. It was also shown that the through rate from Buffalo to St. Paul is but 2 cents per 100 pounds higher than the rate from Buffalo to Duluth, and the claim was made that the value of the storage given is greater than the freight money received by the railway for forwarding the goods at the end of the free-storage period. It appears, however, that the boat lines take less than their charge to Duluth as their proportion of the joint rate to St. Paul. How much less was not shown, but no basis exists for holding that the rate to St. Paul is not compensatory to the railroads even on shipments receiving free storage.

The defendants showed that the storage facilities had been used extensively by Duluth jobbers for freight destined beyond Duluth. One of the witnesses placed on the stand on behalf of the complainant testified, for instance, that his firm had on storage at the Northern Pacific warehouse at the close of navigation in the fall of 1907 about 5,000 tons of cement. It further appeared that this cement comprised about one-third of the total tonnage stored in the warehouse of the Northern Pacific Railway Company at that time.

The defense of the defendant carriers is that the privilege here in question is forced by the competition of other lines through other lake ports. The Chicago & Northwestern Railway, for instance, by its tariff, I. C. C. No. 6627, provides that "carload, lake, rail-and-lake, or canal-and-lake traffic in transit to points on this line and connections may be held at the dock houses at Milwaukee, Manitowoc, or Green Bay for reconsignment." Similar privileges are given by the Chicago & Northwestern, the Chicago, Rock Island & Pacific, and other lines at Chicago. The Chicago, Milwaukee & St. Paul Railway by its tariff, I. C. C. No. A 9779, advertises that it has dock warehouses at the port of Milwaukee, Wis., at which through shipments may be stored free of charge, reconsignment being allowed. This company's tariff provides that if property is delivered locally at Milwaukee regular "dockage and switching charges will be assessed," the rule being almost identical in form and identical in effect with the rules of the defendant carriers at Duluth. The Wisconsin Central Railway, by amendment 16 to I. C. C. No. 1715, offers free storage

with privilege of reconsignment to carload freight at Waukesha, Neenah, Menasha, Manitowoc, and Stevens Point. Similar privileges are offered by the Canadian Pacific Railway at Port Arthur and Fort William, Ontario; by the Canadian Northern Railway at Port Arthur, Ontario, and by the Minneapolis, St. Paul & Sault Ste. Marie Railway at Gladstone, Mich. The roads reaching Duluth, as to much if not all of the territory served by them from that port, are in direct competition with one or another of the carriers above named on ex-lake business.

Complainant challenges the storage principle as in itself unlawful, and therefore not to be justified by competition. This position the Commission, on the record as made, is not prepared to take. The privilege is not given by the defendant carriers only, nor is it confined to the section of the country in which they operate. No justification exists at this time for condemning a practice in which so many carriers and shippers not parties to the record are interested.

Since the submission of this case the following administrative ruling has been made by the Commission:

Tariffs providing arrangements for storage or transit privileges at ports of transshipment on the Great Lakes in connection with traffic moved under rail-and-water tariffs must be published, posted, and filed by the carrier granting the privilege or performing the service, and must stipulate clearly the extent of such privilege and the charges connected therewith. Such tariffs shall also state whether or not the established joint rates published by the initial carrier, from the point of origin to ultimate destination as of the date of shipment from point of origin, will apply. If such privilege is granted or charge is made in connection with the joint rate under which the shipment moves from point of origin the initial carrier's tariff which contains such rate must also contain the privilege or the charge or give specific reference by I. C. C. number to the tariff of the carrier granting the privilege or performing the service which contains such regulations and charges connected therewith.

The above ruling is intended to secure such publishing and filing of the offer of storage or transit privileges as shall preclude the possibility of secrecy or discrimination. Portions of the rule will call for changes in the tariffs of the carriers operating through Duluth and involved in this controversy. These changes, however, will not be greater than those required at other lake ports. It appears from the record that during the time covered by the testimony herein the offer of storage privileges at Duluth has been open to all shippers alike, and has been fully described in the tariffs of the defendant carriers according to the forms then recognized by the Commission and used by carriers generally.

There can be no doubt that the storage privilege at Duluth is forced upon the carriers defendant here by the competition of railways reaching other lake ports, which railways offer free storage at other ports on precisely the same conditions as those here in controversy. The St. Paul jobber is not confined to Duluth as a lake port nor to the defendant

carriers as transportation agencies. He may ship via other ports than Duluth and secure the same privileges he now gets from defendants. This being so, it is apparent that the purpose of the Commercial Club of Duluth would not be achieved even if the order prayed for in the complaint were made. If the free storage were discontinued at Duluth, no possibility of using such privilege would remain to the Duluth merchant. Such privilege would still, however, be open to the St. Paul merchant at other lake ports.

It is of course obvious that the privilege is more valuable to inland merchants than it is to merchants at lake ports. It does not necessarily follow from this, however, that the privilege is unlawful. The view of complainant is that it takes away from the lake port an advantage of its location. The better view seems to be that the inland jobbing center, by reason of its location at a point where the competition of several lake ports operates, also has an advantage of location, one result of which is seen in the effect of this privilege of free storage.

The complaint will be dismissed.

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No. 1837.

AMERICAN GROCER COMPANY

v.

PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Submitted March 7, 1908. Decided April 6, 1908.

Reparation, in the case of a through shipment upon which the rate charged was made up of a joint rate to the gateway plus the local rate of the delivering carrier, which local rate alone is alleged to be unreasonable, will be awarded where the delivering carrier, within a reasonable time after the shipment moved, put in effect a rate conceded by the complainant to be reasonable and stipulated that an order of reparation be directed against it alone.

Arthur Fils for complainant.

L. J. Hackney, William Hodgdon, J. C. Jeffery, and M. L. Clardy for defendants.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The petition was filed November 22, 1907, and charged that on July 6, 1906, complainant shipped from Greenfield, Ind., to Calico Rock, Ark., over the lines of the defendants, one carload of glass fruit jars weighing 32,052 pounds, and was charged $53\frac{1}{2}$ cents per 100 pounds, aggregating \$171.48; that said rate was made up of $16\frac{1}{2}$ cents from Greenfield to Cairo, Ill., and 37 cents from Cairo to Calico Rock, Ark.; that the said rate of 37 cents was in itself, and generally in consideration of the services performed, unjust and unreasonable; that a reasonable and just rate would have been 29 cents, which would have made a total charge of $45\frac{1}{2}$ cents per 100 pounds; and asked reparation in the sum of \$25.64.

The defendants, the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, and the Cleveland, Cincinnati, Chicago & St.

Louis Railway Company, filed separate answers and alleged that their joint rate of 16½ cents extended only from Greenfield to Cairo and was a reasonable rate and that they were not parties to the 37-cent rate.

The St. Louis, Iron Mountain & Southern filed an answer of general denial, stating that the rates charged were the rates filed with the Commission and in force at the time. The case was set for hearing at Little Rock, Ark., on March 10, 1908. Prior to the hearing, the complainant and the St. Louis, Iron Mountain & Southern Railway Company filed with the Commission a stipulation admitting the statements herein made and that the only issue was the reasonableness of the rate in effect and charged by that defendant from Cairo to Calico Rock, of 37 cents, and that immediately after the movement of the shipment, on July 25, 1906, that defendant made effective a rate of 29 cents per 100 pounds for all similar shipments, and that, as applied to the shipment in question, the rate of 37 cents was unjust and unreasonable in so far as it exceeded the rate of 29 cents, and that the complainant was entitled to reparation in the sum of \$25.64, and this Commission was requested to issue an order on the said defendant to pay the same and to maintain in effect a rate not higher than 29 cents per 100 pounds for one year from the date of such order.

Therefore, the conclusions of the Commission are, that this case should be dismissed as to the defendants, the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and that an order be issued requiring the other defendant, the St. Louis, Iron Mountain & Southern Railway Company, to make reparation to the complainant in the sum of \$25.64, and to maintain in force for one year a rate not higher than 29 cents per 100 pounds in carloads, and it is so ordered.

No. 1321.

FOREST CITY FREIGHT BUREAU

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
BARRY TRANSPORTATION COMPANY; CHICAGO & ALTON
RAILROAD COMPANY; CHICAGO & EASTERN ILLINOIS
RAILROAD COMPANY; CHICAGO & NORTHWESTERN
RAILWAY COMPANY; CHICAGO, BURLINGTON &
QUINCY RAILROAD COMPANY; CHICAGO GREAT WEST-
ERN RAILWAY COMPANY; CHICAGO, MILWAUKEE
& ST. PAUL RAILWAY COMPANY; CHICAGO, ROCK IS-
LAND & PACIFIC RAILWAY COMPANY; CHICAGO, ST.
PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY;
COLORADO & SOUTHERN RAILWAY COMPANY; COL-
ORADO MIDLAND RAILWAY COMPANY; COPPER
RANGE RAILROAD COMPANY; DENVER & RIO GRANDE
RAILROAD COMPANY; DES MOINES, IOWA FALLS &
NORTHERN RAILWAY COMPANY; DULUTH & IRON
RANGE RAILROAD COMPANY; DULUTH, SOUTH SHORE
& ATLANTIC RAILWAY COMPANY; EL PASO & SOUTH-
WESTERN RAILROAD COMPANY; FT. WORTH & DENVER
CITY RAILWAY COMPANY; FORT WORTH & RIO GRANDE
RAILWAY COMPANY; GOODRICH TRANSIT COMPANY;
GREAT NORTHERN RAILWAY COMPANY; GREEN BAY
& WESTERN RAILROAD COMPANY; ILLINOIS CENTRAL
RAILROAD COMPANY; ILLINOIS, IOWA & MINNESOTA
RAILWAY COMPANY; INTERNATIONAL & GREAT NORTH-
ERN RAILROAD COMPANY; IOWA CENTRAL RAILWAY
COMPANY; KANSAS CITY, CLINTON & SPRINGFIELD
RAILWAY COMPANY; KANSAS CITY SOUTHERN RAIL-
WAY COMPANY; LEAVENWORTH, KANSAS & WESTERN
RAILWAY COMPANY; LOUISIANA & ARKANSAS RAIL-
WAY COMPANY; MINNEAPOLIS & ST. LOUIS RAILROAD
COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE.
MARIE RAILWAY COMPANY; MISSISSIPPI RIVER &
BONNE TERRE RAILWAY; MISSOURI & NORTH ARKAN-
SAS RAILROAD COMPANY; MISSOURI, KANSAS & TEXAS

13 I. C. C. Rep.

RAILWAY COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS; MISSOURI PACIFIC RAILWAY COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; OREGON RAILROAD & NAVIGATION COMPANY; OREGON SHORT LINE RAILROAD COMPANY; PARIS & GREAT NORTHERN RAILROAD COMPANY; QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY; ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY; ST. LOUIS & HANNIBAL RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY; ST. LOUIS, ROCKY MOUNTAIN & PACIFIC RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS; SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY; SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; SANTA FE CENTRAL RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; TEXAS & PACIFIC RAILWAY COMPANY; UNION PACIFIC RAILROAD COMPANY; UNITED VERDE & PACIFIC RAILWAY COMPANY; WABASH RAILROAD COMPANY, AND WISCONSIN CENTRAL RAILWAY COMPANY.

Submitted March 30, 1908. Decided April 6, 1908.

The inclusion by carriers operating under the Western Classification of multigraphs, in cases in less than carloads, in double first class is unreasonable. Defendants ordered to classify such multigraphs as $1\frac{1}{2}$ times first class.

H. H. Henry for complainant.

T. J. Norton for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The competency of the Forest City Freight Bureau to maintain this complaint has been affirmed by us in a previous decision, and the defendants make no question in that respect here. The complaint is directed against the Atchison, Topeka & Santa Fe Railway Company and many other carriers operating under the Western Classification, for the purpose of obtaining a lower rating upon the multigraph. This article is now classified with the mimeograph and neostyle, as double first class; the complainant insists that it should be classified with printing presses, as second class.

The multigraph is in reality a miniature printing press which prints, unlike most small presses, from a cylinder and not from a bed. The type can be set upon this cylinder by a special device for that purpose, or an electrotype plate can be fastened upon it, after which, by revolving the cylinder, the paper is fed in and ink transferred to the type and paper from a series of gelatine rolls. It will print a sheet 8 inches wide and 17 inches long. It is ordinarily operated by hand, but there is no objection to the application of any form of motive power, and in some few instances it is now being run by electric motor. The multigraph seems to be adapted to use in connection with any business where it is desirable to strike off a comparatively small number of cards, circular letters, or other matter of this character. It is used in some cases for the printing of railroad tariffs, and this Commission under its rule that all tariffs must be printed receives those produced upon this machine. It is simple in construction, easily operated, and seems to fill a want in many business establishments and other offices.

It is a patented device, selling to the customer for \$250, to the dealer from the manufacturer for \$150. Our understanding of the testimony is that the manufacturer delivers the machine at the last-named price. It was stated that up to the present time the cost of constructing it had been about \$75, but when the manufacture is conducted upon a large scale in the most economical way the cost of production must be very much less than this.

The outside measurements of the shipping package contain about $3\frac{1}{2}$ cubic feet and the weight is 100 pounds. When properly packed it is not liable to damage. The manager of the company which makes and puts them upon the market testified that in the last year the company had shipped 1,760 without any complaint of loss or damage in transit.

The complainant insists that this ought to be classified as a printing press, but such is not our conclusion. While the work done by it might in all cases be done by a printing press, its use is in no sense that of the ordinary printing press; nor is the relation between the weight and value anything like that in case of a printing press. It is more in the nature of an office appliance like the typewriter, the cash register, and the adding machine. These are all classified under the Western Classification as $1\frac{1}{2}$ times first class, and we think this machine should be given the same classification.

In our opinion the rate now exacted by the defendants for the transportation of the multigraph is excessive and should not for the future exceed $1\frac{1}{2}$ times that rate which is applied by the defendants under the Western Classification to the transportation of articles classified as first class. It will be understood that this decision only applies to those cases where the Western Classification would govern.

An order will issue accordingly.

No. 1298.

AL. G. FIELD

v.

SOUTHERN RAILWAY COMPANY; SEABOARD AIR LINE RAILWAY; ILLINOIS CENTRAL RAILROAD COMPANY; CENTRAL OF GEORGIA RAILWAY COMPANY; NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; ATLANTA & WEST POINT RAILROAD COMPANY, AND WESTERN RAILWAY OF ALABAMA.

Decided April 6, 1908.

The Commission has no authority under the act to regulate commerce to require carriers to establish special fares, based upon less than the normal passenger-mile revenue, for the use of passengers on particular occasions or for special purposes. On that ground, and also on the ground that the legal right of carriers to issue party-rate tickets and confine their use to theatrical companies has been fully considered by the Commission, this complaint for an order requiring the defendants to reestablish such party rates is dismissed on motion of the Commission.

Robert M. Dittey and James A. Allen for complainant.

Claudian B. Northrop and Ed. Baxter for Southern Railway Company.

Ed. Baxter for Seaboard Air Line Railway; Illinois Central Railroad Company; Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway Company; Louisville & Nashville Railroad Company; Atlanta & West Point Railroad Company, and Western Railway of Alabama.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The prayer of this petition is that the Commission shall enter an order requiring the defendants to reestablish the special party rates which in past years have generally been accorded by carriers to theatrical companies and other special organizations engaged in giving public exhibitions.

It is clear that the Commission has no authority to enter such an order. While the act to regulate commerce as amended confers upon

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the Commission the power to reduce a passenger fare alleged to be excessive, when a complaint to that effect has been filed and the issue thus made has been supported by competent testimony, it has vested in the Commission no affirmative power to require carriers to establish special fares, based upon less than the normal passenger-mile revenue, for the use of passengers on particular occasions or for special purposes. This was so held in *Cator v. Southern Pacific Co. et al.*, 6 I. C. C. Rep. 113, and in *Sprigg v. Baltimore & Ohio R. R. Co. et al.*, 8 I. C. C. Rep. 443, and the question is not to be regarded therefore as open to further discussion.

On that ground alone this petition should be dismissed. The real purpose, however, of the complainant in filing it was to bring to our attention again the question of the legal right of carriers, when they may desire to do so, to issue party rate tickets and to confine their use to theatrical companies and similar organizations that travel through the country for the purpose of giving exhibitions in public. That question also has been extensively argued before the Commission and has had careful consideration. In *In the Matter of Party Rate Tickets*, 12 I. C. C. Rep., 95, the Commission held that such party rates can not lawfully be limited to particular classes of persons, but must be open to the general public. Under these circumstances no useful purpose can be served by having the question of the legality of such rates, when so limited to theatrical and other amusement companies, again submitted for formal hearing. An order to the same effect in this case would not afford the complainant an opportunity to secure a review of the matter in the courts, for under the act to regulate commerce complainants have no recourse to the courts in order to test the soundness of the rulings of the Commission. An appeal for that purpose is open under this legislation only to the defendant carriers.

For these reasons the proceeding is therefore dismissed on motion of the Commission. Should the Commission desire to give further consideration to the general question, it will adopt another course for doing so and in that connection will examine the carefully prepared brief filed herein by counsel for complainant. Should the Commission desire to have its conclusions on the question tested in the courts, it will so arrange in some effective way.

An order will be entered in accordance herewith.

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No. 846.

RAILROAD COMMISSION OF KENTUCKY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY; LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; PENNSYLVANIA RAILROAD COMPANY; CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY; BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; ERIE RAILROAD COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; LEHIGH VALLEY RAILROAD COMPANY; NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; NORFOLK & WESTERN RAILWAY COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; THE TRUNK LINE ASSOCIATION, AND THE CENTRAL FREIGHT ASSOCIATION.

Submitted May 23, 1907. Decided April 6, 1908.

1. Complaint questions reasonableness of rates between Owensboro and Henderson, Ky., and points in Trunk Line and Central Freight Association territories; it also alleges that such rates result in unjust discrimination against Owensboro and Henderson and give undue preference to Evansville, Ind. The carriers most directly interested in the Evansville rates for the most part serve the territory north of the Ohio River, while those most directly interested in the rates to Owensboro and Henderson serve the territory south of the river. There is greater density of population and of traffic in the territory north of the Ohio River known as Central Freight Association territory, in which Evansville is situated, than in territory south of the river, in which Owensboro and Henderson are situated. The general adjustment of rates throughout Central Freight Association territory due to the conditions therein prevailing naturally has a forceful effect upon the Evansville rates. The larger volume of traffic and greater number of carriers operating in that territory create a greater degree of competition, and the rates generally have been adjusted with a view to meeting the conditions resulting therefrom.

2. It is not incumbent upon a road to measure the rates to all points on its line from and to which it handles the bulk of the traffic by lower rates fixed by competitors operating over a more direct route to some other point also on its line, but to which it handles an unappreciable volume of traffic. So to hold would be totally to disregard the effect of competitive conditions which the Supreme Court has held in numerous cases as justifying the application of lower rates to farther distant points over the same line in the same direction. The long and short haul section of the act, as construed by the courts, prohibits the charging of a higher rate to a less distant point only where the carrier responsible for both rates occupies a like relation to the more distant point to which the lower rate applies.
3. The record fails to show that the rates in question are, under present conditions, unreasonable in and of themselves or that the circumstances and conditions under which the traffic is handled to and from Evansville are so substantially similar to those under which traffic is handled to and from Owensboro and Henderson as to make the charging of higher rates to and from the last-mentioned points unjustly discriminatory as compared with the rates applying between Evansville and the same points in Trunk Line and Central Freight Association territories. Complaint dismissed.

Bennett H. Young and *William Lindsay* for complainant.

Ed. Baxter for Louisville, Henderson & St. Louis Railway Company, and Louisville & Nashville Railroad Company.

Sidney F. Andrews and *Ed. Baxter* for Norfolk & Western Railway Company, and Illinois Central Railroad Company.

T. B. Harrison for Louisville & Nashville Railroad Company.

C. H. Gibson for Baltimore & Ohio Railroad Company, Baltimore & Ohio Southwestern Railroad Company, Pennsylvania Railroad Company, and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

G. W. Kretzinger for Chicago, Indianapolis & Louisville Railroad Company.

Alex. P. Humphrey for New York Central & Hudson River Railroad Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint questions the reasonableness of freight rates applying between Owensboro and Henderson, Ky., and points in Trunk Line and Central Freight Association territories. It is also alleged that the rates as fixed by the defendant carriers result in unjust discrimination against Owensboro and Henderson, and other points in Kentucky adjacent thereto, and in undue preference and advantage to Evansville, Ind.

Evansville is situated on the north bank of the Ohio River 11 miles northwest of Henderson and 40 miles from Owensboro, the last mentioned two points being south of the river.

The lines entering Evansville are the Louisville & Nashville, Southern, Illinois Central, Chicago & Eastern Illinois, and Evansville & Terre Haute. The Louisville, Henderson & St. Louis also handles Evansville traffic over the rails of the Louisville & Nashville between Henderson and Evansville.

The lines entering Henderson and Owensboro are the Illinois Central, the Louisville & Nashville, and the Louisville, Henderson & St. Louis.

For the purposes of this case Trunk Line territory may be described generally as west of New England, north of the Potomac River, and east of the so-called Buffalo-Pittsburgh line. Central Freight Association territory is immediately west of Trunk Line territory, north of the Ohio River and east of the Indiana-Illinois state line, including Chicago.

The basis of rate making between points in Trunk Line territory and points in Central Freight Association territory is the New York-Chicago rate, which is denominated 100 per cent. These basic or 100 per cent rates are first fixed and the rates between other points in Trunk Line and Central Freight Association territory are then made a certain percentage thereof.

There is no such defined method of rate-making between points in Central Freight Association territory. Generally rates between points in Southern Classification territory and points in Central Freight Association territory are made on the lowest combination via the several Ohio River crossings.

The 100 per cent class rates between New York and Chicago, used as bases in fixing rates between points in Trunk Line and Central Freight Association territory, are:

1	2	3	4	5	6
75	65	50	35	30	25

On westbound traffic Evansville takes 110 per cent of the New York-Chicago rates, and on eastbound traffic 105 per cent, thus making rates on the various classes, in cents per 100 pounds, to Evansville from New York:

1	2	3	4	5	6
83	72	55	39	33	28

and on traffic from Evansville to New York:

1	2	3	4	5	6
78½	68	52½	36½	31½	26

Prior to August 20, 1905, both Owensboro and Henderson were on a 120 per cent basis, east and west bound, making the rates on the various classes:

1	2	3	4	5	6
90	78	60	42	36	30

Since that date, however, rates applying from Owensboro and Henderson to Trunk Line territory, have been:

1	2	3	4	5	6
7½	6½	5	5	3	3

over the Evansville rates, thus reducing the eastbound rates from Owensboro and Henderson:

1	2	3	4	5	6
4	3½	2½	½	1½	1

The 110 per cent basis was applied on Evansville traffic east and west bound until February, 1905, at which time the east-bound rates to Trunk Line territory were reduced to 105 per cent of the New York-Chicago rates to meet reduced rates initiated by the Baltimore & Ohio Southwestern Railroad from Vincennes, Ind., and to maintain the relative adjustment between Evansville and Vincennes rates. The reduced rates from Henderson and Owensboro to Trunk Line territory made effective on August 20, 1905, followed this reduction in the Evansville east-bound rates. With the exception of this change in the Henderson and Owensboro east-bound rates, the 120 per cent basis has obtained between these points and Trunk Line territory since December 20, 1889.

Complainants attempted to show that when the 120 per cent basis was established between Owensboro and Trunk Line territory there was but one road entering Owensboro (the Owensboro & Nashville, now a part of the Louisville & Nashville), but that since this basis of rates was made effective the Louisville, Henderson & St. Louis Railway (originally the Louisville, St. Louis & Texas) has been constructed between Louisville and Owensboro, shortening the distance between these points from 215 to 113 miles. Tariffs on file with the Commission show that the 120 per cent basis was established to both Henderson and Owensboro on December 20, 1889. The Louisville, Henderson & St. Louis Railway began operating to Owensboro in 1888, some months prior to the establishment of the 120 per cent rates on Owensboro traffic. Prior to the application of this basis the rates from Trunk Line territory to Owensboro based on Evansville were as follows:

	1.	2.	3.	4.	5.	6.
New York to Evansville.....	83	72	55	39	33	28
Evansville to Owensboro.....	21	18	15	14	12	10
Total.....	104	90	70	53	45	38

The present class rates from Louisville to Owensboro, Henderson, and Evansville are as follows:

1	2	3	4	5	6
28	24	20	14	12	10

These, added to the 100 per cent rates applying to Louisville, would make the total combination rates, New York to Owensboro, Henderson, and Evansville:

1	2	3	4	5	6
103	89	70	49	42	35

It is claimed by the carriers that the rates from Louisville are the same to Evansville as to Owensboro and Henderson, for the reason that they are made to meet the competition of steamboats on the Ohio River, and as the boats make the same rates to all these points the rail lines follow the same adjustment.

A large percentage of the traffic between Central Freight Association territory and Henderson and Owensboro is handled via Evansville.

The rates between Henderson and Central Freight Association territory are made by adding arbitraries of $7\frac{1}{2}$, $6\frac{1}{2}$, 5, 5, 3, 3 on classes 1 to 6, respectively, to the Evansville rates. The minimum rates for distances over 10 miles and up to 15 miles in Central Freight Association territory are $7\frac{1}{2}$, $7\frac{1}{2}$, $7\frac{1}{2}$, 7, 5, and $3\frac{1}{2}$ on classes 1 to 6, respectively. Thus it appears that the rates charged for the 11-mile haul between Henderson and Evansville are generally lower than the minimum rates for similar distances in Central Freight Association territory, notwithstanding the movement between Henderson and Evansville necessitates crossing the Ohio River bridge.

These same arbitraries applying between Evansville and Henderson are also used in constructing the through rates to Owensboro, notwithstanding the distance from Evansville to Owensboro is 40 miles.

The petition filed in this case does not question the reasonableness of particular rates applying between any specified points in Central Freight Association territory and Owensboro and Henderson, the complaint being directed against the rates generally. It is, therefore, not clear that the Commission, even were it convinced that the rates as a whole are unreasonably high, could make a general order which would be enforceable in the courts covering every rate applying between Owensboro and Henderson and all points in Central Freight Association territory. As heretofore stated, the rates from Central Freight Association territory are not made on a percentage basis, as are the rates between Trunk Line territory and the points here involved. Nor are the rates made in accordance with any similar system which would result in such a uniform adjustment as would

enable the Commission to deal with the whole fabric of rates and order a horizontal reduction.

A large part of the traffic coming from New York and other eastern points to Owensboro and Henderson moves via the rail-and-water route, or Cumberland Gap Despatch, which is constituted by the Old Dominion Steamship Company, New York to Norfolk; the Norfolk & Western Railway, Norfolk to Norton, Va.; the Louisville & Nashville to Louisville, and the Louisville, Henderson & St. Louis beyond. It is to be noted, however, that while the reasonableness of the through rates applying via the Cumberland Gap Despatch is questioned, the Old Dominion Steamship Company, which is a component part of this route and a party to said through rates, is not named as a defendant in this proceeding.

Approximately 95 per cent of the traffic moving to Evansville from Trunk Line and Central Freight Association territory is handled by carriers operating north of the Ohio River, the remaining 5 per cent being handled by lines south, of which it is claimed the Louisville, Henderson & St. Louis handles but 2 per cent. An unappreciable volume of traffic to and from Evansville moves via the rail-and-water route.

A large percentage of the traffic moving to Evansville via the trunk lines is delivered to the Evansville & Terre Haute Railroad at Terre Haute, which is a 100 per cent point 110 miles from Evansville. In like manner a large part of the traffic moving to Owensboro from Trunk Line territory is delivered to the Louisville, Henderson & St. Louis at Louisville, also a 100 per cent point, 113 miles from Owensboro. A comparison of the rates and earnings of the Evansville & Terre Haute and the Louisville, Henderson & St. Louis railroads, taken from their annual reports to the Commission for the year ending June 30, 1905, shows:

Miles of road operated by the L. H. & St. L.....	186
Miles of road operated by the E. & T. H.....	313.91
Number of tons of freight handled by the L. H. & St. L.....	556,204
Number of tons of freight handled by the E. & T. H.....	2,551,106
Gross earnings per mile of the L. H. & St. L.....	\$4,902.93
Gross earnings per mile of the E. & T. H.....	\$6,912.83
Average rate per ton per mile of the L. H. & St. L.....cents..	.878
Average rate per ton per mile of the E. & T. H.....do.....	1.027
Percentage of operating expenses to gross earnings of the L. H. & St. L.....	74.09
Percentage of operating expenses to gross earnings of the E. & T. H.....	53.38
Average distance hauled, 1 ton, L. H. & St. L.....miles..	109.03
Average distance hauled, 1 ton, E. & T. H.....do.....	51.43

The higher percentage of operating expenses on the Louisville, Henderson & St. Louis may be due in part to the fact that that line operates along the bank of the Ohio River, necessitating the main-

tenance of trestle work and the making of frequent repairs on account of high water.

The original cost of the Louisville, Henderson & St. Louis was \$6,598,000, though it is claimed it would cost greatly in excess of that amount to reproduce the road, on account of the advance in real estate values in the section which it traverses and in the cost of materials; also on account of the improvements which have been added. The present capitalization is \$6,500,000, and the net income for the fiscal year ending June 30, 1905, was \$27,239.64. The bonds of this road, when first issued, sold for 83 and 84. The outstanding bonds, with a face value of \$2,500,000, were quoted at the time of the hearing at about 111 and bear interest at the rate of 5 per cent. The par value of the stock is \$4,000,000, but it was selling at the time of the hearing at 21 cents on the dollar, with an actual value of \$840,000. No dividends have ever been declared on this stock.

The all-rail first-class rate, New York to Evansville, is 83 cents per 100 pounds. The short-line distance being 987 miles, the rate per ton per mile on first-class traffic is 1.68 cents. The all-rail first-class rate, New York to Owensboro, is 90 cents per 100 pounds, and the short-line distance being 979 miles, gives a rate per ton per mile of 1.84 cents. The same rate applying to Henderson, on the short-line mileage of 998, yields a rate per ton per mile of 1.8 cents.

Taking the all-rail first-class rates applying from New York and Chicago to a few important points in the south for the purpose of comparison, we find that the first-class rate of \$1.17 for the haul of 876 miles, New York to Atlanta, yields revenue per ton per mile of 2.7 cents; the first-class rate of \$1.05, New York to Chattanooga, for a haul of 847 miles, 2.48 cents; New York to Nashville, 91 cents per 100 pounds, 998 miles, 1.82 cents; New York to Memphis, \$1 per 100 pounds, 1,157 miles, 1.7 cents.

The first-class rate of \$1.33 per 100 pounds, Chicago to Atlanta, for a haul of 733 miles, will yield a revenue of 3.6 cents per ton per mile; Chicago to Chattanooga, \$1.11 per 100 pounds, 595 miles, 3.7 cents; Chicago to Nashville, 88 cents per 100 pounds, 444 miles, 3.96 cents; Chicago to Memphis, 85 cents per 100 pounds, 527 miles, 3.2 cents.

It appears that the rates applying between Evansville and southern territory are the same as the rates between Owensboro and Henderson and that territory, with the exception of certain territory contiguous to these last mentioned places. Prior to the construction of the Cincinnati Southern road the Evansville rates were higher to the south than the Henderson and Owensboro rates. That road however initiated the same rates from Cincinnati and other points on the north bank of the Ohio River served by it as were in force from Louisville and other points on the south bank to southern territory.

This action forced the carriers serving Evansville and other points north of the river to so readjust the rates to the south as to maintain the relative adjustment between points in Central Freight Association territory, and the parity existing between Evansville, Owensboro, and Henderson rates to southern points is directly attributable to the construction of the Cincinnati Southern road and the competition thus created for traffic between Evansville and points in Central Freight Association territory generally and points in southern territory. In competing for this traffic moving between Evansville and southern territory the Louisville & Nashville can better afford to absorb the bridge toll in crossing the Ohio River than on the traffic from Owensboro and Henderson to the north, for the reason that on the former it participates in much longer hauls over its own rails.

The testimony is not convincing that the rates to and from Owensboro and Henderson are, at this time, under present conditions, unreasonable in and of themselves. The main question, therefore, to be determined is whether or not the circumstances and conditions under which traffic is handled to and from Owensboro and Henderson are similar to the circumstances and conditions pertaining to traffic handled from the same points of origin to Evansville to such an extent as to make the charging of higher rates to the first-mentioned two points unjustly discriminatory. The fact that one of these points lies in territory throughout which applies a certain method of rate adjustment based on the conditions therein prevailing, and which secures to that territory relatively lower rates than those applying throughout another arbitrarily prescribed territory, does not, of course, carry greater weight than may be properly accorded the considerations which should actuate the carriers themselves in adjusting the rates irrespective of the arbitrary line between such territories. The carriers most directly interested in the Evansville rates for the most part serve the territory north of the Ohio River, while those most directly interested in the rates to Owensboro and Henderson serve the territory south of the river. There is greater density of population and of traffic in the territory north of the Ohio River known as Central Freight Association territory, and in which Evansville is situated, than in territory south of the river, in which Owensboro and Henderson are situated. Such differences in conditions reasonably and inevitably result in a different adjustment of rates in the respective territories. Generally the cost per ton of handling freight decreases in proportion to the increase in its volume. Rates applying in a given section are more or less interdependent, since they must be relatively adjusted, as far as may be possible, with regard to the peculiar conditions obtaining at the various points, so that there may be no unjust discrimination as

between places. The general adjustment of rates throughout Central Freight Association territory due to the conditions therein prevailing naturally has a forceful effect upon the Evansville rates. The larger volume of traffic and greater number of carriers operating in that territory create a greater degree of competition, and the rates generally have been adjusted with a view to meeting the conditions resulting therefrom. This competition between carriers likewise creates so-called market competition, each carrier being compelled by considerations of expediency to establish such rates to points which it serves as will enable them to compete with other points where more active railroad competition may have brought about lower rates.

While it is true that by certain routes the distance between Trunk Line territory and Evansville is somewhat greater than between the same territory and Owensboro and Henderson, and that traffic moving via these routes is handled over the same lines at higher rates for the shorter than for the longer distance, such higher rates can not, under the decisions of the courts, be regarded as unjustly discriminatory unless the traffic is handled under substantially similar circumstances and conditions. The rates to Evansville are made by the trunk lines operating through a section of the country in which lower rates generally prevail than in the section served by the carriers handling the bulk of the traffic to Owensboro and Henderson. The more intense competition for the Evansville traffic is also in great measure responsible for the lower rates applied thereon. The carriers handling the bulk of the Owensboro and Henderson traffic are forced to accept, on the small percentage of Evansville business which they are able to secure, rates fixed by those lines directly serving Evansville, and we do not consider that those carriers, simply because they pass through Owensboro and Henderson in moving the traffic to Evansville at lower rates, are for that reason alone unjustly discriminating against the first two mentioned points. The fact that Evansville, which is principally served by carriers traversing a territory in which the volume of traffic is greater and competition more intense, is given rates somewhat lower than those accorded Owensboro and Henderson by the lines directly serving these last-mentioned points, and which operate mainly in a territory of less density of traffic, does not of itself establish the unreasonableness of the Owensboro and Henderson rates, since the lines serving Evansville are confronted there by conditions which do not prevail at Owensboro and Henderson.

It is not incumbent upon a road to measure the rates to all points on its line from and to which it handles the bulk of the traffic by lower rates fixed by competitors operating over a more direct route to some other point also on its line but to which it handles an unappreciable volume of traffic. In other words, a road in accepting, on a comparatively small volume of traffic moving to a given point,

exceptionally low competitive rates, which it must establish in order to secure any part of the traffic, is not thereby estopped from charging reasonably remunerative rates to other points to which it handles the bulk of the traffic from which it must derive the principal part of its revenues. So to hold would be totally to disregard the effect of competitive conditions which the Supreme Court has held in numerous cases as justifying the application of lower rates to farther distant points over the same line in the same direction. The long and short haul clause of the act, as construed by the courts, prohibits the charging of a higher rate to a less distant point only where the carrier responsible for both rates occupies a like relation to the more distant point to which the lower rate applies. The Louisville, Henderson & St. Louis and the Louisville & Nashville, which are the principal defendants in this proceeding, do not stand in the same relation to Evansville as to Owensboro and Henderson, since those roads do not handle the bulk of the Evansville traffic and do not control the rate situation at that point. The carriers serving Evansville are forced by competitive and other general conditions obtaining in Central Freight Association territory to make lower rates to and from that place, therefore the existence of such rates does not establish the unreasonableness of the higher rates applying to Owensboro and Henderson. If it were shown that places farther distant from the points of origin in question and served primarily by the Louisville, Henderson & St. Louis and the Louisville & Nashville are given lower rates than Owensboro and Henderson, and that such rates did not result from greater competition between carriers at such more distant points, but were directly attributable to conditions created by those roads and within their control, this might properly be held to constitute unjust discrimination forbidden by law; but the testimony does not show such a state of facts to exist. On the contrary, it appears that Owensboro and Henderson enjoy advantages in the matter of freight rates secured to them by reason of their proximity to Evansville and which are not enjoyed by other points along the lines of the Louisville, Henderson & St. Louis and the Louisville & Nashville and served principally by those roads.

It is contended by complainants that the defendant carriers have by agreement among themselves fixed the rates here involved in violation of the anti-trust laws, and thus by concerted action have suppressed competition which might naturally have resulted in lower rates to Owensboro and Henderson. While such a method of fixing rates, when proven to exist, leads us to scrutinize more carefully the rates so established with a view to ascertaining whether or not it has in fact resulted in the maintenance of unreasonable transportation charges, and evidence thereof is admissible for that purpose, that fact alone is not conclusive evidence of the unreasonableness of the rates.

It follows that the complaint must be dismissed.

No. 1341.

LYKES STEAMSHIP LINE

v.

COMMERCIAL UNION; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; GULF, COLORADO & SANTA FE RAILWAY COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; TEXAS & PACIFIC RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHICAGO, ROCK ISLAND & GULF RAILWAY COMPANY; ST. LOUIS, KANSAS CITY & COLORADO RAILROAD COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY; TRINITY & BRAZOS VALLEY RAILWAY COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, AND MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

Submitted March 18, 1908. Decided April 6, 1908.

1. An ocean carrier established under the laws of Cuba and transporting traffic between Habana and Galveston is not subject to the act to regulate commerce.
2. The rule laid down in the case of the *Cosmopolitan Shipping Company*, 13 I. C. C. Rep., 266, followed.
3. The word "adjacent," as used in the act to modify the words "foreign country," would seem to mean adjacent in the sense of the possibility of substantial continuity of rails.

Cowan, Burney & Goree and John B. Daish for complainant.

Robert Dunlap, T. J. Norton, J. W. Terry, and J. H. Hawley for defendants.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complaint in this case was filed November 23, 1907. The complainant is a copartnership acting as a common carrier engaged in the transportation of freight between Galveston, Tex., Habana, and

13 I. C. C. Rep.

certain other Cuban ports. The defendant, the Commercial Union, is an anonymous society or limited company organized under the laws of Cuba, and likewise acting as a common carrier of freight between Habana, Cuba, and Galveston, Tex.

The Atchison, Topeka & Santa Fe Railway Company and thirteen other rail carriers of the United States, subject to the act, were also made parties defendant. The Commercial Union and all but three of the rail carriers answered the complaint, and the case being at issue, testimony was taken at Galveston before a special examiner designated by the Commission, depositions were taken under agreement of counsel before the consul-general of the United States at Habana, and further evidence taken before the Commission at Washington. The case was fully heard on briefs and oral argument.

The substance of the complaint is that the defendants have violated and are violating the interstate commerce laws, by reason of their through route and joint rates on shipments from points of origin on the defendants' railway lines in the United States via Galveston to ports in the island of Cuba; by reason of the organization of the defendant, the Commercial Union; and by reason of the dealings of the Commercial Union with Cuban merchants purchasing goods in the United States and routing the same from points of origin on the lines of the railway defendants to Galveston and from Galveston in its ship to Cuban ports—giving a certain number of shares of its capital stock for every \$1,000 received by it on such freight.

Shipments from points of origin in the United States consigned to destinations in the island of Cuba are made and routed either by the complainant, or by the defendant, the Commercial Union, and the freight charges specified in the tariff on the through routes and joint rates are paid to the railway carriers at the point of origin.

The Commercial Union was organized in Habana, April 27, 1905, under the laws of Cuba, as an anonymous society, or limited company. Seventeen citizens of Habana, mostly merchants, joined in organizing the company, and each one of the seventeen organizers received gratuitously 10 shares of the capital stock of the company, which was placed at \$1,000,000 currency of the United States of America, represented by 10,000 shares of a nominal value of \$100 each. The objects of the association were fully set forth in the papers filed according to the laws of Cuba, and were briefly: (a) To establish a line of steamers between Habana and the ports of the United States, particularly the Gulf ports; (b) to center the control of such ocean carrier in the merchants of Habana; and (c) to stimulate shipments via such carrier by awarding for every \$1,000 paid to said carrier for freight 4 shares in the capital stock of the company during the first year of its existence, 3 shares the second year, 2 shares

the third year, and 1 share the fourth year, after which no further shares were to be given for freight, shippers being permitted to tack the freight paid during any year to that paid during succeeding years until the \$1,000 was made up to authorize the receipt of shares.

Some shares were sold for cash, and with the money thus raised the Commercial Union chartered a steamer and began business as a common carrier between the ports of Habana, Cuba, and Galveston, Tex.

The ninth section of the complaint is, in part, as follows:

That said Commercial Union, by the means aforesaid, and by solicitation and by the offer to give and grant the concessions aforesaid in the way of the said gratuitous stock, and by the inducements held out to permit shippers of such freight to share in the profits of the business of the said Commercial Union, secured a large number of customers at Habana and other points on the island of Cuba who, from that time down to the present time, have been and are now entitled to receive the said shares of stock in consideration of the shipment of freight from points on the said lines of railroad in the United States to Cuba, via Galveston and the Commercial Union steamship, and which shipments have been and are so made upon the said published through joint rates of freight from said points in the United States, via Galveston and the Commercial Union steamships, to Habana, and if consigned to other points of Cuba, then by transshipment on to other points.

That in accordance with its obligation to do so, said Commercial Union did issue and distribute said gratuitous shares of stock to its patrons who were shippers of freight as aforesaid upon the rate aforesaid, and about November, 1906, issued said shares to patrons of the said Commercial Union who were the shippers of said freight upon said rates as aforesaid, being 228 common shares, widely distributed to various and sundry merchants of importance in the island of Cuba, and to parties elsewhere located, which said shares are still outstanding. That said shares were issued as an inducement and as a thing of value to persons to whom issued for the purpose of inducing them to ship and route their freight from said points in the United States via the Commercial Union via Galveston to Cuba.

That the persons, firms, and corporations holding said gratuitous certificates of shares are constantly shipping upon the through joint rates of freight aforesaid, various articles of merchandise from points of origin in the United States on said lines of railways as shown in said tariff, from which said rates apply as therein shown, to Cuban points via Galveston, and over the line of the said Commercial Union, being induced thereto by the advantages offered and to be given through the means of receiving the aforesaid gratuitous shares of stock of the Commercial Union, and that the said parties are induced to route the said freight and direct that it be routed from points of origin in the United States on the lines of said railways over the respective railroads to Galveston, and thence over the line of the Commercial Union to Habana, for the purpose of obtaining the benefits to be thus received on account of the payment of the freight, to wit, the amounts specified in the tariffs on file as aforesaid with the Interstate Commerce Commission.

Paragraph 10 alleges knowledge on the part of the railway companies of the facts set forth, and paragraph 11 asserts the violation of the second, third, and sixth sections of the act to regulate commerce by the Commercial Union and the railway companies.

The answer of the Atchison, Topeka and Santa Fe Railway Company, as well as the answer of the Commercial Union, admitted the situation with respect to the giving of shares by the Commercial Union; but denied that this was a violation of the act to regulate commerce, and denied that such shares were given upon the joint through rate. These answers also set forth the protest by the Atchison, Topeka and Santa Fe Railway Company against the issuance of such shares by the Commercial Union on freight received, as soon as it learned of them, and further set forth that the charter of the Commercial Union had been amended to prohibit the issuance of gratuitous shares for freight routed via the ocean carrier.

The reason for the organization of the Commercial Union is found in the course of business between the United States and Cuba which is, and for many years has been, that all goods sold for delivery at Habana are sold c. i. f.; or, in other words, the price charged the consignee in Habana includes the cost of the goods, the insurance on the shipment, and the freight from point of origin to the port of Habana. Under this custom, no matter where the contract may be made, the transaction is in reality a sale of goods delivered at the port of Habana. The payment for the merchandise, therefore, was in effect the same as though the consignee himself had paid the freight. The organizers of the Commercial Union having this in mind, determined to derive some benefit therefrom, if possible, by owning the ocean carrier participating in the transportation, and as the manifests and other papers of such carrier would be under their own control and the division of the through rate enjoyed by it known to them, they could readily ascertain what amount of freight, estimated in dollars, was paid by any particular consignee whereon to assign stock in the company.

The laws of Cuba permitted maritime transportation companies to issue shares of stock in consideration of patronage extended. There was nothing illegal and nothing concealed or underhanded about the organization of the Commercial Union. The articles of association of the company were duly recorded in the office of the mercantile recorder of Habana, and all the formalities of the Cuban laws complied with. In addition to this the company issued a printed circular addressed to the merchants of Habana generally calling attention to the new carrier and offering its benefits and facilities to all equally.

The complaint does not allege any wrongdoing with regard to rebates on freight originating at Habana and carried thence to the United States, but is directed solely to the giving of shares of the company, the Commercial Union, to merchants in Habana on freight paid by them from the United States. No share of the company was ever issued to any citizen of the United States in consideration of freight routed via the Commercial Union.

This case differs from the case of the Cosmopolitan Shipping Company, 13 I. C. C. Rep., 266, in that while the case cited named only the ocean carriers as defendants, here the rail carriers of the United States, which participate in the joint through rates involved, are also joined as defendants. The knowledge, by the rail carriers, of rebating on the part of the Commercial Union in respect to freight carried by such rail carriers from the point of origin in the United States to the port of transshipment, the through charges on which had been collected by them, was alleged in the complaint and denied in the answer. The proof is conclusive that, assuming the practices of the Commercial Union to have been illegal and assuming the jurisdiction of this Commission, no guilty knowledge was ever had by such rail carrier. On the contrary, the fact is, that when the defendant, the Atchison, Topeka & Santa Fe Railway Company learned in July, 1907, of the shares given by the Commercial Union for freight participated in by it, the said railway company notified the Commercial Union of its doubt concerning the legality of such practices and demanded the cessation thereof. Thereupon, at a regularly called meeting of the Commercial Union, in Habana, on September 9, 1907, at which the required majority of the stock of the company was represented, the articles of association of the company were amended so that thereafter no shares should be issued in return for freight paid. This action of the Commercial Union, as contained in the notarial minutes of the meeting, was duly recorded according to Cuban law in the office of the mercantile recorder of Habana October 7, 1907. These recorded notarial minutes show, in part, as follows:

The president [of the Commercial Union] stated that in his opinion it was unnecessary to give away free any more shares of said corporation to patrons of the same or to any other person; that it had so been required by United States railway companies, whose services this corporation utilizes, as an indispensable condition for them to continue rendering such services, said railway companies alleging that such gifts had given rise to claims by certain parties on the basis that they were contrary to the United States laws and that such claims might injure said railway companies. The president opened the question to discussion and the meeting finally resolved, unanimously, that without accepting or acknowledging the assumed illegality of said gifts, and because it is necessary as a practical measure in order to continue utilizing the services of said railway companies * * * shares * * * can not be given away free to patrons of the corporation or to other persons. Ninth. The prohibition contained in the latter part of the foregoing clause shall in no way affect * * * holders of common shares already issued.

This action of the meeting of September 9 was incorporated in the notarial deed of September 13 and recorded in the public records of the office of mercantile recorder of Habana October 7, 1907, thereby amending the articles of association of the company and notifying all who might be concerned.

The complaint in this case was filed November 23, 1907, a month and a half after the things complained of ceased; indeed, the act of the Commercial Union was really retroactive in that the action taken in September, 1907, prevented any issue of stock for freight paid for a year prior thereto, the company year ending on September 30. The matter before us, therefore, is narrowed to the point stated at the hearing of the case before the Commission February 11, 1908, by the attorney for the complainant.

The main question is a question of law. The facts are undisputed in regard to the cessation of the issuance of stock. We admit that. Unless it is a violation of law to have the stock outstanding in the manner and under the circumstances in which it is outstanding, the Commission would have nothing to decide.

In the present case it is unnecessary to discuss the jurisdiction of the Commission where ocean carriers participate with rail carriers of the United States in joint rates on through bills of lading. That matter is settled by the decision of the Supreme Court of the United States in the cases of *Armour Packing Company et al. v. United States* (Nos. 467, 468, 469, 470), October term, 1907, delivered March 16, 1908, and the decision of this Commission in the case of the *Cosmopolitan Shipping Company*, 13 I. C. C. Rep., 266. As we said in the case last cited, the complainant—

may bring before the Commission the rail carriers engaged in the transportation of such foreign commerce to and from the ports of transshipment and subject them to investigation as to their methods of handling such business and the reasons therefor. If it is found that there is discrimination * * * on the part of these rail carriers, it is within the function of the Commission to correct such wrong.

In this case such rail carriers have been brought before the Commission, but the evidence shows them to have been without knowledge of the practice of the Commercial Union in giving shares of stock in return for freight paid until July, 1907, and that immediately thereafter they demanded the cessation of that practice in order to avoid even the appearance of concurring in what might be construed as a violation of the act.

The complainant raised the question whether Cuba is "an adjacent foreign country" within the meaning of the act. The word "adjacent," as used in the act to modify the words "foreign country," would seem to mean adjacent in the sense of the possibility of substantial continuity of rails. Indeed, as was pointed out in the report to the Senate on the original act to regulate commerce in the year 1886, this meaning is made plain. The report said:

While the provisions of the bill are made to apply mainly to the regulation of interstate commerce, in order to regulate such commerce fairly and effect-
13 I. C. C. Rep.

ively it has been deemed necessary to extend its application also to certain classes of foreign commerce which are intimately intermingled with interstate commerce, such as *shipments between the United States and adjacent countries by railroad*.

We are asked to find, however, that the holding of the outstanding shares of stock of the Commercial Union, heretofore issued in return for freight paid to that ocean carrier, with the possibility of receiving dividends thereon, is a continuing violation of the act. This we are unable to do. The allotment of such shares was legally made to citizens of Cuba by a company organized under the laws of that country and in consideration of freight carried by such ocean carrier. No rail carrier subject to the act joined in such allotments of stock; nor were such allotments made dependent on such rail carrier's proportion of the freight paid, but only on the proportion received by the ocean carrier. This Commission has no such jurisdiction.

One of the prayers of the complaint is:

That the defendant rail carriers may be ordered to cease and desist from publication of and participation in such tariffs of rates and charges and any tariffs, rates, and charges in connection with said Commercial Union.

The Commission, without passing an order on the subject, calls the attention of all the parties to this case to its report in the case of the Cosmopolitan Shipping Company, cited above, particularly to that portion of the report which says:

The Federal Government has said that this Commission shall exercise jurisdiction over the inland portion of the haul, either to or from the foreign country; and it must logically and necessarily follow that the rate which must be filed with the Commission under section 6 of the act is the rate governing such movement. On foreign commerce the rate to be published with this Commission should be the rate to the port and from the port—an open rate, which any who desire to do so may use with equal advantage. The publication of such rate does not in any manner limit the very valuable privilege of through billing. Such through billing should clearly separate the liability of the rail and the ocean carrier and show the published rate of the inland carrier. The routing of the freight, however, should remain with the shipper, and upon him may be imposed no greater charge to the port when his freight goes by one ocean line than by another, and this rate to the port the tariffs must disclose.

The complaint in this case should be dismissed and it is so ordered.

13 I. C. C. Rep.

No. 1422

LANING-HARRIS COAL & GRAIN COMPANY

v.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY.

Submitted March 16, 1908. Decided April 6, 1908.

Under Western Trunk Line Committee Joint Through Freight Tariff No. 802, I. C. C. No. 701, the rate on soft coal from Springfield, Ill., to Leona, Kans., is 10.0013 cents per 100 pounds, not 9.0013 cents per 100 pounds.

C. W. Durbin for complainant.

S. E. Stohr for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This case is submitted upon an agreed statement of facts.

In January, 1907, the complainant shipped a carload of coal weighing 50,000 pounds from Springfield, Ill., to Leona, Kans., a station upon the line of the defendant railway company. The defendant assessed upon this shipment a rate of 10.0013 cents per 100 pounds. The complainant insists that the rate should have been 9.0013 cents per 100 pounds, and this is the only question presented.

It is conceded that the rate from Springfield was the same as from Peoria. Western Trunk Line Committee Joint Through Freight Tariff No. 802, I. C. C. No. 701, names rates on soft coal from St. Louis, Peoria, etc., to stations in Missouri, Kansas, etc., and was in effect at the time of this shipment.

On page 43 of this tariff rates are named to various points upon the St. Joseph & Grand Island Railway of 10 cents per 100 pounds, from St. Louis, subject to the following note:

On shipments originating beyond the rates from Mississippi River points will be 1 cent per 100 pounds less than rates named above.

13 I. C. C. Rep.

On page 55 of the same tariff is found the following:

**BASIS FOR RATES FROM PEORIA, CHICAGO, ILL., ST. PAUL, DULUTH, MINN., AND
SUPERIOR, WIS.**

To make rates from Peoria, Chicago, Ill., St. Paul, Duluth, Minn., and Superior, Wis., to stations named on pages 17 and 54, inclusive, add the following differentials, in cents per 100 pounds, to rates applying from St. Louis, Mo.:

From Peoria, Ill., to Index Nos. 2960 to 3007, inclusive, soft coal, c. 1., .0013.

Leona, Kans., is index No. 2967, and is therefore included in the above provision. Adding this differential to the rate named on page 43 from St. Louis to Leona there results a through rate of 10.0013 cents per 100 pounds. If, however, the rate from St. Louis is diminished 1 cent before making the addition according to the note on page 43, for the reason that the shipment originates east of the Mississippi River, then the resulting rate would be 9.0013 cents per 100 pounds, as claimed by the complainant.

In our opinion, the charges were correctly assessed. The rate named from Peoria is in the nature of a specific rate. Peoria is itself east of the Mississippi River, and if the intention had been to name a rate of 9.0013 instead of 10.0013 cents the tariff would have so stated in terms.

The provision for a reduction of the rate from the Mississippi River by 1 cent when the traffic originates east of that river fairly applies to those cases in which the freight moves up to the river upon some local rate from the point of origin when the through rate would be formed by combining the rate to the river with a rate 1 cent less than the rates named in the tariff from the river.

The complaint will be dismissed.

13 I. C. C. Rep.

No. 1102.

LINCOLN COMMERCIAL CLUB

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; UNION PACIFIC RAILROAD COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY; KANSAS CITY SOUTHERN RAILWAY COMPANY; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, AND ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Submitted March 7, 1908. Decided April 6, 1908.

Defendants exact higher rates on the commodities named below, to Lincoln, than to Omaha, from the same points of origin in Kansas and territory south and west of the Mississippi River, for substantially the same distances;
Held,

1. That the rate upon coal may properly be 15 cents per ton higher to Lincoln, and upon paving brick and cement $1\frac{1}{2}$ cents per 100 pounds higher to Lincoln than to Omaha.
2. That with respect to lumber, glass and glassware, salt, rice, egg-case fillers, and sugar, rates from said points of origin to Lincoln should not exceed those to Omaha.

Field, Ricketts & Ricketts for complainant.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

F. C. Dillard for Union Pacific Railroad Company.

J. C. Jeffery, M. L. Clardy, and K. M. Wharry for Missouri Pacific Railway Company.

Hale Holden for Chicago, Burlington & Quincy Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant, a voluntary association of business men located in the city of Lincoln, Nebr., brings this petition for the purpose of securing a readjustment of certain rates which are alleged to discriminate in favor of Omaha against Lincoln.

The traffic in question all originates at points west of the Mississippi River south of St. Louis, or of the Missouri River north of St. Louis. Four of the defendants, the Union Pacific, the Chicago, Rock Island & Pacific, the Chicago, Burlington & Quincy, and the Missouri Pacific, enter the city of Lincoln. The remaining defendants make joint through rates with the defendants already named from points of origin to Lincoln and Omaha.

The complaint alleges that class rates from Kansas City and similar Missouri River points are the same to both Omaha and Lincoln, and that the commodity rates attacked by the complainant are exceptions to the general rule. In point of fact the class rates are not the same. Upon several of the classes rates are somewhat less to Omaha than to Lincoln, and this was commented upon in the argument as an unlawful discrimination against Lincoln; but, as just observed, no such allegation is made in the petition, no testimony was introduced upon that point, and the matter is not considered in this report.

Ordinarily rates from points east of the Missouri River to points west in Nebraska are formed by adding together the rate from the eastern point up to the river and the rate from the river to the point in Nebraska. Lincoln is situated some 55 miles southwest of Omaha and about 50 miles west of the Missouri River by the nearest crossing. Upon the above method of rate construction, therefore, rates to Lincoln from eastern points would be considerably higher than those to Omaha. Previous to the passage of the act to regulate commerce in 1887 these arbitraries against Lincoln had been 10 cents first class, 9 cents second class, and somewhat less upon the remaining classes and upon various commodities. It was thought that the effect of the act would necessarily be to somewhat reduce these arbitraries, and the various railway lines serving Omaha and Lincoln finally agreed upon a series of differentials by which rates to Lincoln from the east were made higher than those to Omaha by 5 cents upon classes 1 and 2, 4 cents upon classes 3 and 4, and 3 cents upon the remaining classes and upon most commodities.

Soon after these reduced arbitraries took effect, the business interests of Lincoln, conceiving themselves to be prejudiced by this adjustment of freight rates, filed complaint with the Commission attacking these differentials from St. Louis. *Lincoln Board of Trade v. Missouri Pacific Railway Company*, 2 I. C. C. Rep., 155. It was conceded, apparently, that rates from eastern points might properly be somewhat higher to Lincoln than to Omaha; but it was contended that the Missouri Pacific could handle business at substantially the same expense from St. Louis to both Omaha and Lincoln, and hence that rates from that point to these two cities ought to be the same. The Commission, after full hearing, in a well-

considered report sustained the differentials. The report states that the cost of the movement to Lincoln may be somewhat greater than to Omaha; that the Wabash Railroad is the short line between St. Louis and Omaha and insists upon a lower rate to Omaha than to Lincoln; and that to make the rates from St. Louis to both these points the same would disarrange the system of rate making to Missouri River points and through those points to stations in Nebraska and Kansas. The defendants insist that the decision in this original Lincoln case should control the present proceeding.

The complainant denies that it is seeking to disturb the former decision of the Commission. It makes no question but what rates from St. Louis and generally from points east of the Mississippi and Missouri rivers may properly be higher to Lincoln than to Omaha, but it insists that rates from points west of those rivers to Lincoln ought not to exceed those to Omaha.

As already noted, the traffic in question originates at points south and west of Kansas City. In all cases it might move to Kansas City and thence to Omaha and Lincoln. In many cases the short line from the point of origin would be through Kansas City, although in several instances a shorter line could be made through some junction point west of Kansas City. Since the length of the haul is always more favorable to Lincoln when some interior Kansas junction point is used than when the route is made through Kansas City, we may, for the purposes of this discussion, assume that the traffic in all cases moves via that junction.

The Union Pacific and the Rock Island lines afford long and circuitous routes between Kansas City and Omaha or Lincoln. Unless the route is formed through some interior Kansas junction neither of these roads could ever be made part of the short line. They may therefore also be disregarded. The short lines between Kansas City and both Omaha and Lincoln are the Missouri Pacific and the Burlington. The distance from Kansas City to Omaha by the Missouri Pacific is 205 miles; to Lincoln from 208 to 211 miles, according to the route selected. The traffic moves over the same line for the first 150 miles out of Kansas City. It was said that the main line was that to Omaha, that the Lincoln line was a branch, and that for this reason the expense of moving traffic to Omaha was less than to Lincoln.

It is probably true that somewhat more business moves over the line to Omaha than over that to Lincoln; we are not satisfied that there is any material difference in expense. The Burlington Route from Kansas City to Omaha is on the east bank of the Missouri River; that to Lincoln is upon the west side of the river. The distance is practically the same, being in this case slightly less to Lincoln than

to Omaha. It was said here again that the cost of moving traffic to Omaha was less than to Lincoln, but no satisfactory reason was given in support of this assertion. Lincoln is upon the main line of the Burlington to Billings. Taking everything into account, it is apparent that the cost of handling traffic from Kansas City to Omaha and Lincoln is practically the same and that difference in expense does not justify the maintenance of a higher rate to the complainant city than to its rival. Justification for these higher rates must be found, therefore, if at all, in commercial and competitive conditions rather than in added cost of service. The articles with respect to which complaint was made are coal, lumber, cement, paving brick, glass and glassware, salt, egg-case fillers, rice, and sugar. The questions presented can be best disposed of by considering each of these articles separately.

COAL.

Originally coal was supplied to both Omaha and Lincoln from the east. There are in the state of Iowa at distances varying from 130 to 200 miles from Omaha coal mines producing a fair quality of both steam and domestic coal. This coal moves to Council Bluffs upon rates established by the railroad commission of Iowa, and since Council Bluffs and Omaha are competing towns carriers have always extended these Iowa rates to Omaha as well. The present Iowa rates for a distance of 150 miles are, upon lump and nut \$1.15, upon pea and slack 89 cents per ton.

For many years Omaha also obtained coal in considerable quantities from Illinois, and this coal was necessarily brought there at rates which would enable it to compete with Iowa coal. Later coal began to come in from various points in the vicinity of St. Louis, Mo., and still later from points in southeastern Kansas. At the present time all these coals compete in Omaha. Kansas coal is better adapted for steam purposes than the Iowa coal and sells at a somewhat higher price. Plainly the freight rate from all these points must be such as to enable the coal to be laid down in Omaha at such relative prices as will justify its use. The rate fixed by the Iowa commission is regarded by carriers as an extremely low one. No lower rate has ever been voluntarily established by the carriers and no higher rate can be made. This rate, therefore, determines the maximum rates which can be charged from other producing points. The present rates from the Pittsburg district, Kansas, are \$1.60 on lump and \$1.35 on slack. Rates from points in Missouri are somewhat less, being from Rich Hill \$1.30 on lump and \$1.06 on slack.

The testimony of the defendants shows, and an examination of the tariffs seems to bear out this contention, that these rates have

been arrived at by a series of experiments in the past, and that they are so adjusted as to permit a free movement into the Omaha market from all these various mines. Something more than one-half the soft coal consumed at Omaha comes from Kansas and Missouri, but large quantities move from the Iowa fields.

Rates to Lincoln from all fields are 15 cents a ton higher than Omaha. When the coal supply of Omaha and Lincoln came exclusively from the east the distance to Lincoln was greater and the cost of transporting the coal to that point was consequently greater, all of which justified a somewhat higher rate to Lincoln than to Omaha. If Lincoln still depended upon the Iowa fields for its supply no question is made but what the rate ought fairly to be 15 cents per ton higher than that to Omaha. The defendants claim that the rates which they make from the Kansas fields to Omaha are not reasonable rates but are forced by competition, and that since they are compelled to make this rate to Omaha by these competitive conditions that rate ought not to be taken as the standard by which to measure their rate to Lincoln.

The distance from the Pittsburg field to Omaha is about 350 miles, so that the rate of \$1.60 on lump yields revenue of only about 4.6 mills per ton per mile; the rate on slack is less than 4 mills per ton per mile. While these rates are, as complainant observes, no lower than the scale of the Iowa commission extended to that distance, nevertheless, measured by rates generally in effect in this country under similar conditions, they must be regarded as abnormally low. This being so, we do not think the mere fact that the defendants establish these rates to Omaha affords any sufficient reason why they should be compelled to maintain the same rates to Lincoln, even though Lincoln and Omaha are rival cities. Undoubtedly, in establishing a rate to Lincoln we should have in mind the competitive relation of Omaha and Lincoln. But there is no rule requiring under these circumstances absolute equality in these two rates, and it can hardly be said that a rate of \$1.75 for the transportation of lump coal 350 miles, of \$1.50 for the carriage of slack the same distance, is excessive. Upon the contrary, such rates must be regarded as extremely low.

The location of Omaha, lying as it does, within 150 miles of the coal fields of Iowa, connected with those fields, as it practically is, by the low commission rate of that State, gives to Omaha a natural advantage in the purchase of its coal supply which these defendants may properly recognize in the naming of their rates. To require them, under the conditions disclosed, to establish the same rate on coal from these Kansas mines to Lincoln and to Omaha, would be to take away from Omaha this natural advantage and to equalize natu-

ral conditions which are adverse to Lincoln. *Wichita v. Atchison, Topeka & Santa Fe Railway Co.*, 9 I. C. C. Rep., 558, 568.

We are constrained to hold, therefore, that the defendants are not in violation of law in charging a rate 15 cents per ton higher to Lincoln than to Omaha for the carriage of coal from these southern districts.

CEMENT.

This commodity was originally obtained both at Omaha and Lincoln from the east and the rate to Lincoln was therefore 3 cents per 100 pounds higher than to Omaha. In process of time the source of supply changed and to-day the cement used at Lincoln comes mainly from Hannibal, Mo., and from Iola and other cement-producing points in the gas belt of Kansas; and from both these sources of supply the distance and cost of carriage is substantially the same to both Omaha and Lincoln. Omaha has, however, certain other sources of supply from which it has been and will be able to obtain cement at a somewhat cheaper rate than from Kansas and Missouri. Large cement works are just about to be put into operation at Mason City, Iowa, 130 miles east of Omaha, and an extensive cement plant has for some time existed at Mankato, Minn., 175 miles from Omaha. The distance from Hannibal to Omaha is somewhat less by the Wabash Railroad, which does not reach Lincoln, than it is by the Missouri Pacific. Taking this whole situation into account, we are inclined to the opinion that Omaha is fairly entitled to own its cement somewhat cheaper than Lincoln.

The rate from Hannibal and Iola to Omaha, a distance of approximately 325 miles, is only 10 cents per 100 pounds or \$2 per ton. This rate is evidently made under stress of competition, and here, as with coal, the mere fact that these defendants have established such a rate to Omaha is no conclusive reason why they should be required to make the same rate to Lincoln. We are of the opinion, however, that the differential is too wide. The consumption of this commodity has grown to be very large and is still increasing. It is one of the most desirable kinds of freight from a transportation standpoint. The rates of freight ordinarily applied to its carriage are extremely low. Under the Iowa tariff it takes a rate of 6.45 cents per 100 pounds for a distance of 130 miles and for a distance of 185 miles, which would be the added distance from Omaha to Lincoln, the rate would be only 7.53. In our opinion, rates on cement from various producing points in question to Lincoln ought not to exceed those to Omaha by more than 1½ cents per 100 pounds.

PAVING BRICK.

Paving brick are manufactured at Galesburg, Ill., and at Coffeyville, Kans., and at other points in southern Kansas. The testimony
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shows that most of the paving brick used in Lincoln in recent years have come from Galesburg. The rate from both Galesburg and Coffeyville to Omaha is $7\frac{1}{2}$ cents and to Lincoln $10\frac{1}{2}$ cents per 100 pounds. The distances are from Galesburg to Omaha 333 miles; to Lincoln 388 miles; from Coffeyville to both Omaha and Lincoln 364 miles.

What has been said with respect to cement applies with the same force to paving brick. The supply of both these cities comes mainly from the east. The rate from Coffeyville is a low one, forced by competition from the east. We think the rate to Lincoln may properly be somewhat higher than that to Omaha, but that the present differential is too great and that the difference ought not to exceed $1\frac{1}{2}$ cents per 100 pounds.

LUMBER.

The differential upon lumber against Lincoln is 1 cent per 100 pounds. Formerly the lumber supply of both Omaha and Lincoln came from the northwest, mainly from the States of Minnesota and Wisconsin. This source of supply has been largely exhausted, and those cities now obtain their lumber principally from the southern forests west of the Mississippi River and from the Pacific Coast. It was said, and not denied, that 80 per cent of this lumber came from the south, 15 per cent from the Pacific Coast and the other far western forests, and 5 per cent from the northwest, the latter being mostly high grade pine. The cost of bringing this lumber from the south is the same to Lincoln as to Omaha. From the Pacific Coast by the Burlington Route, which is the shortest from many points, the lumber would pass through Lincoln on its way to Omaha. It is only from the northwest and with respect to that small portion of the whole that the cost of laying down this commodity is greater at Lincoln than at Omaha.

Under these circumstances we are unable to see any legitimate reason why Omaha should own its lumber cheaper than Lincoln. It was said that the Illinois Central Railroad insisted upon a lower rate to Omaha than to Lincoln because it brought from points east of the Missouri River lumber which competed with that produced farther west, and also that the distance to Omaha by the Wabash was slightly less than by other lines from St. Louis. But it fairly appears that the lumber which supplies both these markets comes almost entirely from west of the Mississippi. The fact that the Illinois Central Railroad sees fit to insist upon the maintenance of a lower rate to Omaha than is made by other carriers to Lincoln is no good reason in itself for maintaining the higher rate at Lincoln. The time has gone by when the mere fact that some railroad, without assignable reason, insists that some locality shall enjoy a

peculiar advantage is a sufficient reason for giving to that locality this advantage.

In our opinion rates on lumber from all points of production west of the Mississippi River should be the same to Lincoln and Omaha.

RICE.

The rice consumed in the Missouri Valley was at one time brought partly from the Orient and partly from South Carolina. To-day it all comes from the fields of Louisiana and Texas, and can reach Lincoln, as already said, by the same distance and at the same cost of service as Omaha. We see no good reason why the rate adjustment of former days should continue after every condition which induced that adjustment has passed away. No higher rate should be applied to the transportation of rice from southern points west of the Mississippi to Lincoln than to Omaha.

GLASS.

With respect to glass the case is even stronger. This commodity was also originally produced exclusively in the east, mainly in Indiana. The rates were, of course, 3 cents per 100 pounds higher to Lincoln than to Omaha. To-day the source of supply has moved. Most of the glass consumed in Lincoln is purchased in the gas belt of Kansas and reaches Lincoln either via Kansas City or some route through the interior of Kansas. The rate to Omaha is not abnormally low. Under these circumstances what possible reason can be assigned why a higher rate should be charged on glass and glassware from Kansas points to Lincoln than to Omaha? In our opinion the maintenance of such higher rates is an undue discrimination, and therefore unlawful.

SALT.

At one time eastern salt fields, notably Michigan, supplied this whole territory. To-day Lincoln draws practically its entire supply of salt from Hutchinson and other Kansas producing points. The distance from Detroit to Omaha is 780 miles, from Hutchinson 505 miles; and the element of distance is still more in favor of Lincoln. It seems absurd to say that Lincoln should pay for this commodity, which is produced in the west, more than Omaha, for the sole reason that originally the commodity was purchased in the east.

It was suggested that the rate from Kansas points of production to Omaha must be the same as the rate to Kansas City, and that this low rate, owing to shorter distance, might well be less than that to Lincoln. But we do not find in this suggestion any reason for maintaining a higher rate from the Kansas fields to Lincoln than to Omaha, and in our opinion such higher rate ought not to be continued.

EGG-CASE FILLERS.

Large quantities of eggs are shipped into both Omaha and Lincoln from the country, concentrated into carloads at these points, and shipped out in various directions. In the shipment of these eggs to markets of consumption, what are known as egg-case fillers are used. These fillers are obtained to some extent in Iowa, but come mainly from points in the gas belt of Kansas. The rate on this commodity from Kansas points is 3 cents higher to Lincoln than to Omaha.

It is evident that this is a discrimination against the operator at Lincoln. He pays a rate upon his fillers which is 3 cents higher than that paid by the operator at Omaha, and when he ships the eggs out to the east, and most shipments are in that direction, he pays an additional 3 cents per 100 pounds over the Omaha operator.

No competitive conditions were shown which seemed to us to justify the imposition of the higher charge to Lincoln than to Omaha from these Kansas points, and in our opinion the rate should be the same.

SUGAR.

This Commission has in the past held that a higher rate might be applied from Pacific coast points to the transportation of sugar to an intermediate point like Lincoln than to a Missouri River point like Omaha. At the present time the rate from all western points is the same to both Lincoln and Omaha, probably because a very considerable portion of the sugar which moves under this rate is beet sugar manufactured at various western points. Rates from the east are still 3 cents higher to Lincoln than to Omaha, and the same differential is observed from the south.

Most sugar originating in the south is shipped from New Orleans, and under the former decision of the Commission it is evident that the rate from that point might properly be higher to Lincoln by 3 cents. Sugar is, however, also produced at certain points in Louisiana and west of the Mississippi River, and this complaint attacks the rates from those points. We see no reason why our holding as to lumber and rice ought not to be extended to sugar when shipped from points west of the Mississippi River.

The defendants, with some earnestness, urge that the holding which we have made will require them to readjust their distributing rates from Lincoln and from Omaha, but we are unable to appreciate the force of this suggestion. Cities have no indefeasible lien upon any given jobbing territory. Changes in conditions are always likely to affect the boundaries of that territory. Conditions are not the same when Lincoln draws its supplies from points of production in the

west or south that they were when these supplies came through Omaha from the east. It is no part of the business of a railroad to so adjust its tariffs as to artificially define the territory into which particular jobbing localities may sell.

The defendants should make the same rates from points of origin in Kansas and south and west of the Mississippi River to both Lincoln and Omaha upon lumber, glass and glassware, salt, rice, egg-case fillers, and sugar, and they should not charge in excess of $1\frac{1}{2}$ cents per 100 pounds more to Lincoln than to Omaha on cement and paving brick.

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No. 1060.

BAER BROTHERS MERCANTILE COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY AND DENVER
& RIO GRANDE RAILROAD COMPANY.

Submitted December 30, 1907. Decided April 6, 1908.

1. A railroad company whose road lies entirely within the limits of a single state becomes subject to the act to regulate commerce by participating in a through movement of traffic from a point in another state to a point in the state within which it is located, although its own service is performed entirely within the latter state.
2. To maintain a petition before this Commission for the recovery of excessive freight charges it is not necessary that the payment of the freight should have been made under protest.
3. A rate of 45 cents applied to the transportation of beer from Pueblo to Leadville, which is part of a through transportation from St. Louis to Leadville, is excessive; such rate should not exceed 30 cents per 100 pounds. Reparation awarded.
4. The bringing of a suit in the United States circuit court for the recovery of excessive railway charges is not a bar to a subsequent proceeding before this Commission where that suit was dismissed without prejudice, and for the reason that the Commission had never passed upon the reasonableness of the rate involved.

W. B. Harrison for complainant.

E. N. Clark for Denver & Rio Grande Railroad Company.

J. W. Preston for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant is a corporation engaged in the liquor business at Leadville, Colo., which seeks by this petition to recover of the defendants damages on account of certain alleged unreasonable charges for the transportation of beer in carloads from St. Louis, Mo., to

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Leadville. The beer was transported at various times between July, 1902, and April, 1907. The rate under which it moved was a combination of the rate of the Missouri Pacific from St. Louis to Pueblo, which during a part of the period covered by this controversy was 50 cents per 100 pounds, and during a part 45 cents per 100 pounds, and the rate of the Denver & Rio Grande from Pueblo to Leadville, which was during all the time 45 cents per 100 pounds, thus making a total rate during a portion of the period of 90 cents and during the remainder of 95 cents. The complainant insists that this should not have exceeded 60 cents or at the most, under the circumstances of this case, 70 cents.

The beer was delivered by the Lemp Brewing Company to the defendant, the Missouri Pacific Railway Company, at St. Louis, with instructions to transport the same to Leadville, Colo., for delivery to the complainant, and with the further instruction that shipments should be routed beyond Pueblo via the Denver & Rio Grande. At the time of receiving the shipment the Missouri Pacific in all cases issued to the Lemp Brewing Company a shipping receipt, stating that the beer had been received by it for shipment to the order of the Baer Brothers Mercantile Company, Leadville, Colo., via the Denver & Rio Grande Railroad.

The freight upon the first shipment was paid by the complainant at Leadville to the Denver & Rio Grande Company. The complainant stated to the agent of that company that it regarded the rate as excessive and unlawful and declined to pay the same except under protest, whereupon the agent of the Denver & Rio Grande accepted the amount of the freight and wrote upon the expense bill or receipt for such payment the words "paid under protest." In all other cases the freight was paid by the Lemp Brewing Company at the request of the complainant and on its account, and was by the instruction of the complainant paid under protest; and this fact in all cases, with possibly one or two exceptions, was minuted upon the receipt given to the Lemp Company by the agent of the Missouri Pacific at the time of the payment of the money and the execution of the receipt.

The complainant and also the Lemp Brewing Company by the instruction of the complainant notified both the Missouri Pacific Company and the Denver & Rio Grande Company at some time before the bringing of the suit hereinafter referred to that these charges were considered unreasonable and made claim for refund. After considerable correspondence this claim was denied, and the complainants brought suit. Still later that suit was dismissed and this petition filed.

The shipment upon which the freight was paid at Leadville to the Denver & Rio Grande by the complainant was transported by the

Missouri Pacific from St. Louis to Pueblo and there delivered to the Denver & Rio Grande, which paid the Missouri Pacific its published rate for the transportation of the beer from St. Louis to Pueblo, treating the payment as an advance charge. The Denver & Rio Grande then transported the beer without further instruction from either the Lemp Brewing Company or the complainant from Pueblo to Leadville, and collected of the complainant both its own charges from Pueblo to Leadville and the amount which it had advanced the Missouri Pacific.

All the other shipments were carried by the Missouri Pacific to Pueblo and there delivered to the Denver & Rio Grande for transportation to Leadville, the Missouri Pacific paying to the Denver & Rio Grande its charges for transportation from Pueblo to Leadville. In no case was any instruction given by the complainant or the Lemp Company or any person in their behalf as to the route or destination of the property, except what was given at St. Louis. Acting under these instructions and in the regular course of business, the beer was delivered at Pueblo to the Denver & Rio Grande and transported by that company to Leadville.

In point of fact the transportation from St. Louis to Pueblo was conducted by the Missouri Pacific upon a local waybill, and that from Pueblo to Leadville was also conducted by the Denver & Rio Grande upon a local waybill; but of this neither the Lemp Company nor the complainant had information. The complainant did know that the rate was made up by adding to the rate from St. Louis to Pueblo the local rate of the Denver & Rio Grande from Pueblo to Leadville.

The distance from St. Louis to Pueblo is about 923 miles, and the rate during the time covered by this investigation was sometimes 45 cents and sometimes 50 cents per 100 pounds. The complainant concedes that this was a just and reasonable charge for the performance of that part of the service. The distance from Pueblo to Leadville via the Denver & Rio Grande is about 160 miles, and the rate of that company between these points was during all the time 45 cents. The complainant insists that this rate was unjust and unreasonable and should not have exceeded 15 cents per 100 pounds.

During the entire period covered by these shipments there was in effect a joint rate between the Missouri Pacific and the Denver & Rio Grande on beer from St. Louis to Salt Lake City of 70 cents per 100 pounds, under which that commodity was actually carried by the defendants. The route over which this rate applied was from St. Louis to Pueblo and from Pueblo to Salt Lake City via Malta Junction, near Leadville. The complainant claims that under the fourth section of the act no higher charge should have been made for the transportation of this commodity to Leadville than was applied

to Salt Lake City, a more distant point, and that he is entitled to reparation by the difference between the published rate to Salt Lake City and the rate which he paid to Leadville.

The defendant, the Denver & Rio Grande Company, insists that the transportation from Pueblo to Leadville, under the circumstances disclosed, was a purely local transaction entirely within the state of Colorado, and not, therefore, subject to the jurisdiction of this Commission; and this is the first question for decision.

The first section of the act to regulate commerce gives this Commission jurisdiction of any "common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water where both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States or the District of Columbia to any other state or territory," etc. Since the transportation in question was entirely by railroads the words above inclosed in parentheses may be disregarded. So reading the first section the defendants would be subject to our jurisdiction provided this transportation was from one state or territory to another state or territory.

This beer was carried from St. Louis in the state of Missouri to Leadville in the state of Colorado. Every party to the transaction so understood it. It was delivered to the Missouri Pacific for the purpose of being transported to Leadville. It was received and carried by the Denver & Rio Grande with full knowledge of the fact that that company was participating in a transportation from St. Louis to Leadville. If this was not a transportation of property wholly by railroad from a point in one state to a point in another state, it would be difficult to state a case of such transportation. If it be the kind of transportation defined by the first section, then both the Missouri Pacific and the Denver & Rio Grande by participating in that movement become subject to the act with respect to the transportation itself.

The defendant apparently concedes that Congress might have assumed jurisdiction over this movement from Pueblo to Leadville, but contends that it has not done so. It urges that the transportation performed by it is a local service entirely within the state of Colorado, which has been expressly excepted from the operation of the act by the terms of the proviso in the first section, which reads, "Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory, as aforesaid."

The constitutional warrant for the act to regulate commerce is found in that provision which gives to Congress control over commerce with foreign nations and between the several states. It was evidently the purpose of Congress in the enactment of this statute to assume control of transportation, which is a part of commerce, in so far as it could lawfully do so, when that transportation was by railroad. The transportation over which Congress had control was of two kinds: (1) that between the states and territories, (2) that between the United States and foreign countries. The Federal Government had and could have no authority over transportation which began and ended in a particular state.

It would have control of transportation from the United States to a foreign country even when the movement in the United States was entirely within a single state. If, for example, traffic was taken up at Buffalo by the New York Central and thence carried to New York City as a final destination, this service would be entirely within the state of New York and not subject to Federal control; but if that carriage was of property in transit from Buffalo to a foreign country, then it would fall within the purview of national supervision.

The purpose of the proviso was to make plain the exact extent of the jurisdiction of the Commission. When the transportation is wholly within a state that jurisdiction attaches, provided the carriage is part of a through movement to some foreign country. If the movement is from one state to another state the jurisdiction also attaches. The only instance in which the Commission has no jurisdiction is where the movement is entirely within the limits of a state and is not part of a movement to or from a foreign country.

The transportation in question, as we have already seen, was from the state of Missouri to the state of Colorado, and this was so understood and intended by the Denver & Rio Grande when it participated in the movement. This being so, it is entirely immaterial that the part of the movement performed by the Denver & Rio Grande is entirely within the state of Colorado. *The Daniel Ball*, 10 Wall., 577.

We can have no doubt, therefore, that as this statute stands to-day the transportation and all railroads participating in that transportation are subject to the jurisdiction of the Commission.

Previous to the amendment of June 29, 1906, the words "or partly by railroad and partly by water, where both are used under a common control, management, or arrangement for a continuous carriage or shipment," were not inclosed in parenthesis, and the Federal courts inclined to the opinion that this language applied to carriers by railroad as well as to carriers by railroad and by water. When, therefore, a carrier operated entirely within a state, as does the Den-

ver & Rio Grande in carrying this merchandise from Pueblo to Leadville, it was necessary to show not only a through interstate movement from St. Louis to Leadville, but also that the Denver & Rio Grande had entered into some arrangement for a continuous carriage or shipment. Most of the shipments in question occurred while the law stood in this form, and it may be that if we could have exercised no jurisdiction over this road from Pueblo to Leadville previous to August 28, 1906, we have no authority now to inquire, with respect to shipments which moved prior to that date, whether the rate charged was or was not reasonable. It is not deemed necessary to decide this question, since it seems clear that even as the statute read previous to the taking effect of the above amendments, the Denver & Rio Grande was subject to our jurisdiction as to these shipments under the circumstances disclosed in this record.

The case shows that the Missouri Pacific and Denver & Rio Grande had in effect joint rates for the transportation of beer from St. Louis to Salt Lake City, and that these rates applied over the same route by which this beer was carried from St. Louis to Leadville. The Denver & Rio Grande during all the time covered by these transactions habitually received from the Missouri Pacific at Pueblo, in regular course of business, freight of all kinds destined to Leadville and similar points, and did also, during all this time, receive freight at points like Leadville for transportation via Pueblo and the Missouri Pacific to eastern destinations outside of the state of Colorado. It maintained at Pueblo facilities for the regular interchange of this business in order that the shipment might be a continuous one. By arrangement with the Missouri Pacific when it received freight from that company at Pueblo it advanced the charges of the Missouri Pacific Company up to that point, and, vice versa, when it delivered freight taken up by it at interior Colorado points to the Missouri Pacific it received from that company its own charges up to Pueblo. We think it perfectly clear that this course of business would amount to an "arrangement" within the meaning of the first section.

But the Supreme Court of the United States has decided this question in the Social Circle case, and it is sufficient to refer to that decision without further discussion. *Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 184. The Cincinnati, New Orleans & Texas Pacific Railway extended from Cincinnati to Chattanooga; the Western & Atlantic Railway from Chattanooga to Atlanta, and the Georgia Railroad from Atlanta to Augusta. Social Circle is located upon the Georgia Railroad between Atlanta and Augusta. The three railroads established a joint through rate for the transportation of merchandise

from Cincinnati to Augusta. The Cincinnati, New Orleans & Texas Pacific Railway and the Western & Atlantic Railway established a joint through rate from Cincinnati to Atlanta, which was the same as the joint rate of the three to Augusta. Merchandise from Cincinnati to Social Circle was transported under the joint rate to Atlanta plus the local rate from Atlanta to Social Circle, thus making a higher rate to Social Circle than to Augusta.

The Commission ruled that the defendants should make no higher charge for the transportation of merchandise to Social Circle than was made to Augusta, a point beyond Social Circle on the same line. This order was resisted by the carriers upon the ground that the Commission had no jurisdiction over the transportation from Atlanta to Social Circle, since that was conducted by the Georgia Railway entirely within the state of Georgia.

It will be seen that this case was exactly analogous to the one at bar. We have here an interstate rate up to Pueblo and a state rate from Pueblo to Leadville. We have a joint rate from St. Louis to Salt Lake City via this same line. The Georgia Railroad moved traffic from Atlanta to Social Circle upon a local waybill and had instructed its connections that it would insist on treating the carriage from Atlanta to Social Circle as a local proposition. The Supreme Court held that the movement from Cincinnati to Social Circle fell under the jurisdiction of the Commission as the law then stood. This case is decisive of the one before us, and upon the strength of it we hold that both under the present act as amended June 29, 1906, and under the act as it existed previous to these amendments this entire movement from St. Louis to Leadville, and the Denver & Rio Grande as a participant in that movement, were subject to our jurisdiction.

It would be certainly a most remarkable conclusion to hold that the Denver & Rio Grande by some instruction to its connection, or by some billing arrangement upon its own line, could exempt traffic to Leadville from the operation of Federal control, and could subject traffic to stations upon either side of Leadville to that control.

The complainant insists that Leadville is an intermediate point upon the line of these defendants between Salt Lake City and St. Louis, and that they are therefore in violation of the fourth section in charging rates of 90 and 95 cents to Leadville, when their charge to the more distant point is but 70 cents. The defendants deny that Leadville is an intermediate point within the meaning of the fourth section, and further claim that, should it be held to be intermediate, circumstances and conditions are so different at Salt Lake City as to justify the lower charge for the longer haul.

Formerly the main line of the Denver & Rio Grande ran through the city of Leadville and both its passenger and freight trains were operated through that city. Subsequently, however, the route was

changed and the main line now runs, and has run during the period involved in this case, through Malta Junction. Leadville is about $4\frac{1}{2}$ miles from Malta Junction, some 700 feet higher, and the Denver & Rio Grande operates a branch line between these points.

Under these circumstances we are inclined to hold that Leadville should not be treated as intermediate, within the meaning of the fourth section. A town might be intermediate, although located some short distance from the line of the railway, so that the railroad did not literally pass through it; but when, as in this case, a town is connected with the main road by a branch road, requiring a separate and independent service at considerable cost to reach it, it ought not to be regarded as intermediate. The idea of the statute seems to be that where the transportation is conducted through a point, the cost of service to that point can not be greater than the cost to the more distant point, and the charge shall be no more. Now, it is evident in this case that the cost of transporting passengers or property to stations a considerable distance beyond Malta Junction might be materially less to the defendant than the cost of taking that traffic out of its regular trains and elevating it 700 feet over a distance of $4\frac{1}{2}$ miles. In our opinion, the fourth section can not be said to apply, owing to the location of Leadville, and this renders it unnecessary to consider the existence of the alleged competition at Salt Lake City, which is relied upon by the defendants in justification of the lower rate. It should be noted that the complainant raises no question of discrimination under the third section.

The only remaining question is one of fact upon the reasonableness of these charges. The complainant concedes that the rate of the Missouri Pacific from St. Louis to Pueblo, which was sometimes 45 cents and sometimes 50 cents, was not excessive, but claims that the charge of the Denver & Rio Grande of 45 cents for transporting this beer 160 miles was unjust and unreasonable.

The main line of the Denver & Rio Grande runs from Pueblo to Grand Junction, through a mountainous section. Its original construction was difficult and expensive, and its cost of operation is high. The density of traffic upon its main line is about the average for the whole United States. For the year ending June 30, 1907, its gross earnings were \$8,484.50 per mile and its net earnings \$3,078.93 per mile upon the entire system, and must have considerably exceeded that upon its main line and main-line branches. It has a funded indebtedness of about \$35,796 per mile and a stock issue of \$38,481 per mile, of which something more than one-half is preferred. For the last six years it has paid a dividend of 5 per cent upon its preferred stock, and, in addition, has shown a considerable annual surplus, which has been invested in the improvement of the property. Its average receipts per ton-mile upon all business for the year end-

ing June 30, 1907, were 1.346 cents, and it was operated for 63.71 per cent of its earnings.

It can not be said, certainly, that the financial condition of this system is such as to justify the imposition of rates otherwise extravagant and excessive. Generally speaking, beer is transported at low rates. The rate from the Missouri River to Denver, 538 miles, is 30 cents; from Denver to Salt Lake City, over the line of the Denver & Rio Grande, a distance of 742 miles, the rate is 50 cents. It has been already said that from St. Louis to Salt Lake City, during most of the time covered by this proceeding, these defendants have maintained a rate of 70 cents for a distance of 1,547 miles. Between Chicago and Omaha, 500 miles, a rate of 22 cents applies. A rate of 45 cents for 160 miles is something over 5 cents per ton-mile. We do not think there is anything in the circumstances of this transportation, or in the financial condition of the defendant, the Denver & Rio Grande, which can justify the imposition of that charge to the transportation of this commodity. In our opinion, 30 cents per 100 pounds, in carloads, from Pueblo to Leadville, is sufficient as applied to this movement. It must be borne in mind that this is part of a through haul and that the charge for this portion might well be less than would be reasonable for a purely local service over the same distance.

We find, therefore, that the Denver & Rio Grande has exacted from the complainant charges in excess of what would be just and reasonable by the amount of 15 cents per 100 pounds. The total shipments upon which the complainants paid these higher rates and on account of which it is entitled to recover this 15 cents per 100 pounds aggregated 2,292,178 pounds. We therefore find that the Denver & Rio Grande Railroad Company has collected of the complainant the sum of \$3,438.27 in excess of just and reasonable charges for the transportation of this beer.

The Denver & Rio Grande Company insists that these payments by the complainant were made voluntarily and that therefore no recovery can be had. At common law a payment voluntarily made with full knowledge of the facts could not be recovered, and this principle has been applied to the payment of railway charges. It seems to have been generally held that in order to lay the foundation for the recovery of money paid a common carrier by rail upon the ground that the charge was excessive the payment must be under protest, otherwise the carrier might assume that it was voluntary.

The act to regulate commerce provides that all rates shall be just and reasonable, and lays upon carriers the duty of maintaining rates which are just and reasonable. That act further provides that any person damaged by breach of its provisions may apply to the Commission and obtain an order for the payment of whatever damages

have been sustained through failure to observe the law. Under this provision of the act the Commission has in the past awarded damages in the nature of reparation by the amount of the difference between the rate paid, when that rate was found to be excessive, and what would have been a reasonable rate. We have never held, nor do we think, that a protest made at the time of the payment of the freight money is a necessary prerequisite to the maintaining of a petition before this Commission for the return of unreasonable charges exacted. It may be true that the requirement of the first section that charges for interstate transportation of persons or property shall be just and reasonable is only declaratory of the common law, but when the statute goes further and prescribes the means and the manner in which infractions of this provision may be prosecuted, it is fairly inferable that had it been the intention of the legislator to require a preliminary protest this requirement would have been embodied in the statute itself.

The statute now prescribes the duty and provides that for a breach of that duty an action will lie. How can it be assumed that such action can only be maintained in those cases where the excessive charge has been paid under formal protest at the time of its payment? It may well be said that shippers ought not to be permitted to pay these charges without objection during considerable periods of time and afterwards claim damages on the ground that they were excessive. Such a case would present a question of good faith and of acquiescence which might properly be disposed of upon that ground, but that is not at all the question presented here.

In *Knudsen-Ferguson Fruit Co. v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co.*, 149 Fed. Rep., 973, the circuit court of appeals for the seventh circuit held that no recovery could be had because the payment had been voluntarily made. The charges involved were for icing. The complainant insisted that it was the duty of the carrier to furnish ice as an incident to the transportation without the making of any additional charge to its published tariff, and sought to recover what had been paid for the icing of a carload of fruit. Soon after receiving the shipment the complainant paid to the defendant the charges for the freight and icing without objection, and the court was of the opinion that under these circumstances the payment must be treated as voluntary and that no recovery could be had, even though the charge for the icing itself was in fact unlawful.

It is not clear that this case would be decisive of the question before us. Here the proceeding is brought for a violation of the statute and according to the provision of the statute; there the suit was for failure upon the part of the defendant to discharge its common-law duty. But assuming that the principle of that decision

would include the case under consideration, we still feel that we ought not to follow it. The question is one of very great practical importance. It has never been passed upon by the Supreme Court of the United States. If we deny reparation upon this ground, the complainant apparently has no appeal from our decision. While ordinarily the decision of the circuit court of appeals would be regarded as controlling by this Commission, in the present instance we deem it our duty to follow our own judgment in awarding the reparation.

The Supreme Court of the United States has held that the reasonableness of railway charges where the question of reparation is involved must be first passed upon by this Commission, and this decision rests largely upon the ground that in no other way can the act to regulate commerce be so applied as to prevent confusion and gross discrimination between shippers. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426. If it should be finally determined that a protest must be made at the time of payment of the freight money in each case, the result would be the grossest discrimination. A shipper paying under protest without the knowledge of other shippers might thus obtain the right to recover these charges while all other persons were debarred from that privilege during the period covered by the protest.

It should be noted that the complainant in this case has attempted to make with respect to each of the shipments involved a specific protest. The freight upon the first shipment was paid to the Denver & Rio Grande and was under protest. Upon all subsequent shipments the freight was prepaid by the Lemp Brewing Company on account of the complainant and was under formal protest in nearly every instance. If, therefore, a protest to the Missouri Pacific upon prepayment of the freight charges is to be construed as a protest to the Denver & Rio Grande, then the complainant has in fact paid the freight on these shipments under protest.

Ordinarily if property is delivered to a railroad destined to a point beyond the line of the receiving carrier the duty of that carrier is to transport the freight to the point of connection with the next railroad and deliver it to such carrier for transportation beyond. In that case the receiving carrier would probably be regarded as the agent of the shipper in making delivery, and if the freight charges had been prepaid by the shipper and the receiving carrier paid these charges to the connecting carrier, the receiving carrier would be, in the making of this payment, the agent of the shipper and not the agent of the connecting carrier. In the present case, if there were no through route and no arrangement for the handling of this through business, it would seem clear that the Missouri Pacific in

passing over this freight money to the Denver & Rio Grande should be regarded as the agent of the shipper and not as the agent of the Denver & Rio Grande. We are inclined to think, however, that when two carriers enter into an arrangement like that which existed between the defendants in this case under which freight is handled over their respective lines as a continuous shipment, under which charges are both advanced and received, these carriers can not be regarded as entirely independent and distinct entities, as they would be under the common law, but must be held to have assumed certain relations with respect to one another and with respect to the traffic which they handle. We are inclined to hold, as a matter of fact, upon the record presented that the Missouri Pacific was the agent of the Denver & Rio Grande in receiving these prepaid charges, and that therefore the complainant did, as a matter of fact, make each separate payment under protest.

The freight upon the first shipment was clearly paid under protest. It may be finally held that the freight upon the other shipments was not and that a protest is necessary. Hence, for the purpose of protecting the rights of the parties in subsequent proceedings in court, we state the amount of the first shipment by itself, which was 30,090 pounds, giving \$45.14 collected by the defendant, Denver & Rio Grande Railroad Company, in excess of a reasonable charge for the service. This complaint was filed May 6, 1907.

Becoming satisfied, after considerable correspondence with the defendants, that no adjustment of its claim could be secured, the complainant did, on September 14, 1906, begin suit against the defendants in the United States circuit court for the district of Colorado to recover the alleged excessive freight charges. After the filing of this suit, but before a trial, in consequence of the decision of the Supreme Court of the United States in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, *supra*, the complainant asked leave to dismiss said suit, and the same was dismissed by the court without prejudice on May 2, 1907.

The defendant insists that the complainant is precluded by the bringing of that suit from maintaining the present proceeding before the Commission, for the reason that by bringing the suit it exercised an election under the ninth section to proceed in court, and, therefore, by the terms of that section, lost its right to proceed by petition before the Commission. But it is plain that under the above decision the complainant never had a right to proceed before the court and could not, therefore, exercise an election or lose, by attempting to elect, its right to proceed before this body.

An order should issue directing the Denver & Rio Grande Railroad Company to pay the complainant the sum of \$3,438.27, with interest from May 6, 1907.

The prayer of the complaint is, among other things, that the Commission fix "a just rate for the through transportation of beer in carload lots from said city of St. Louis to said city of Leadville." There is no suggestion either in the complaint or in the prayer looking to the establishment of a joint rate, and that subject was not referred to either upon the trial or in the argument. This being so, we ought not to establish a joint through rate, and we do not think that we should undertake by our order to fix in this proceeding the locals which will make up the charge for the through movement in the future. There has been no practical difficulty in making these shipments over this route in the past. If the Denver & Rio Grande does not reduce its charge in accordance with this report, or if suitable through facilities are denied, the complainant can file its petition asking the establishment of a joint through route and rate.

13 I. C. C. Rep.

No. 1167.

HYDRAULIC PRESS BRICK COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY; HOUSTON & TEXAS CENTRAL RAILROAD COMPANY; TEXAS & NEW ORLEANS RAILROAD COMPANY, AND MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY.

Submitted March 3, 1908. Decided April 6, 1908.

1. Defendants' rate of 48 cents per 100 pounds for the transportation of enameled brick from Cheltenham, Mo., to New Iberia, La., is under the circumstances unjust and unreasonable and should not exceed 30 cents per 100 pounds for the future. Reparation awarded.
2. The practice of inserting obscure and general clauses in voluminous tariff publications, to the effect that where a combination of locals, either general or in specific instances, will make a lower aggregate through rate than the specific joint through rate therein stated, the former will be used, has been found by long experience to result in gross misapplication of the tariffs and in unjust discriminations. Under this practice the individual or concern whose business is large enough to warrant the employment of a traffic or rate expert will be able to secure combinations resulting in lower aggregate charges than can be secured by the smaller or occasional shipper who is unable to employ such an expert and who is required to pay the joint through rate appearing on the face of the tariff. It is self-evident that if such discriminations are to be broken up there can be but one lawful rate in effect at a given time on any commodity in the one direction between two points.
3. A carrier may in its own interest, if it so desires, carry for a longer distance over its own line than would be necessary if carried between the same points over the line of its competitor, in order to obtain a portion of the competitive business, upon terms that will afford some profit. It does not necessarily follow, however, that a carrier in competing for traffic in this way thereby subjects itself to an order compelling it to do so.

William S. Bedal for complainant.

F. C. Dillard for Houston & Texas Central Railroad Company, Texas & New Orleans Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company.

J. G. Egan for St. Louis & San Francisco Railroad Company, and St. Louis, San Francisco & Texas Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Between August 2 and October 1, 1906, complainant shipped from Cheltenham, a suburb of St. Louis, Mo., to New Iberia, La., three carloads of enameled brick over the St. Louis & San Francisco Railroad to Houston, Tex., and thence by the lines of the Morgan's Louisiana & Texas Railroad & Steamship Company to destination, upon which shipments charges were collected at the rate of 40 cents per 100 pounds on a total alleged weight of 132,165 pounds, making an aggregate charge of \$528.66. A class rate of 48 cents per 100 pounds, car-load minimum 40,000 pounds, was then and is now effective upon such shipments. The rate of 40 cents appears to have been applied through an unexplained error on the part of the railway agent at destination. One car containing 6,500 brick, estimated to weigh 38,350 pounds, was charged on the basis of the 40,000-pound minimum. Another carload was estimated to weigh 49,560 pounds, as shown in the waybill, and charges were collected on that basis. The other car contained 6,945 brick, estimated in the waybill to weigh 40,395 pounds, but freight was charged and collected on an alleged weight of 42,605 pounds. The complaint is that the rates in effect and charged are, in so far as they exceed 25 cents per 100 pounds, excessive, unreasonable, and unjust, and that on the last-named car the charges were made upon an erroneous weight, in excess of actual weight. Reparation is asked for the charges collected in excess of 25 cents per 100 pounds and on account of the alleged excessive weight upon which the charges on the car last above referred to were assessed.

The defendant, Morgan's Louisiana & Texas Railroad & Steamship Company, on the line of which New Iberia is located, in its answer, after alleging that the rate of 40 cents was applied in error and that steps would be taken to collect the amount of the undercharge, further says:

This defendant is perfectly willing, with the approval and authority of the Interstate Commerce Commission, to apply a 33 cent rate by all routes made up of 15 cents to New Orleans and 18 cents beyond on the shipments referred to by complainant and made the basis of this complaint and also on future business.

The Illinois Central Railroad Company had at the time of these shipments and still has in effect a rate of 15 cents from St. Louis and Cheltenham to New Orleans, and the Morgan's Louisiana & Texas Railroad & Steamship Company had a rate of 18 cents from New Orleans to New Iberia. The St. Louis & San Francisco, the Morgan's Louisiana & Texas Railroad & Steamship Company, and the Illinois Central Railroad Company are parties to a tariff carrying the through class B rate of 48 cents and also naming a commodity rate of 20 cents

on pressed brick. This tariff, however, contains a provision which in effect limits the St. Louis & San Francisco Railroad Company to participation in through rates therein named to points on other roads where they exceed 20 cents per 100 pounds.

Mr. C. W. Owen, assistant general freight agent of the last-named defendant company, in his testimony said:

Prior to the administrative rulings of your honorable body, there was in our tariff a clause that provided for the application of combination rates, which were always through published rates, and upon the ruling of the Commission that such clauses in tariffs were illegal we felt in duty bound to apply the class rates on these shipments. In answering this complaint we have admitted that we believe that the 48-cent rate was unreasonable, because on its face it was higher than the combination of the locals through New Orleans.

While the short-line distance via the Illinois Central Railroad Company from St. Louis to New Orleans and thence via the Morgan's Louisiana & Texas Railroad & Steamship Company to New Iberia is 835 miles, the distance by the route over which these shipments moved is 1,208 miles.

From St. Louis and Kansas City territory, including the point of origin of these shipments, to points in Arkansas, there is no difference in the rates on pressed brick and enameled brick. At the time the shipments in question moved the rate on both kinds of brick from St. Louis and points taking same rates, including Cheltenham, to Texas common points, also Galveston and Houston, was 22 cents per 100 pounds. This rate continued in effect until June, 1907, when the rate on enameled brick was advanced to 25 cents. There is no difference in the rates applying on shipments from St. Louis to Columbus, Ga., and other southeastern points, and none on shipments originating in Central Freight Association territory, destined to points in the South. Generally speaking, no difference is made in these rates, and even in the exceptional cases in which the rate is not the same, the difference seldom, if ever, exceeds 3 cents per 100 pounds except in some instances where brick of the one kind have been placed in one class and those of the other kind have been put in another class or given a commodity rate to meet some special conditions. This seldom occurs, however, as brick of both sorts are usually carried on commodity rates. From Mount Savage, Md., to Texas common points there are special commodity rates of 49 cents on enameled brick and 39½ cents on common brick. From Joplin, Mo., to both Beaumont and Port Arthur, Tex., the rate on brick (except both enameled and fire brick) is 12 cents.

Since this case was submitted, the rate on enameled brick, effective March 30, from St. Louis (including Cheltenham) to Texas common points, also to Houston, Galveston, and Beaumont, has been raised from 25 cents to 39 cents, the Class E rate. The reasonable-

ness of this increased rate is, of course, not before us in this proceeding.

The Western Weighing and Inspection Bureau is maintained by the railways operating in this territory for the purpose of securing the application of correct weights upon freight by actual weighing or reliable estimates. By becoming a member of this association and subject to its rules a shipper may have weights of some commodities, including brick, estimated according to the rules fixed, upon condition that his books shall be open to inspection of the association at any time, and weights as thus made are accepted by the railroads as *prima facie* correct.

Complainant was a member of this association until August 20, 1906, just two days before the first of these shipments was made, and during the period of his membership therein had made numerous shipments on the basis of 5.8 pounds per brick, which was the weight estimated by the association and which had been uniformly accepted without question by the railroads.

Not being a member of the association when these shipments were made, complainant's cars were weighed by the carriers, the alleged net weight of the brick being ascertained by subtracting the stenciled from the gross weight of the loaded cars. By this method freight was charged on 132,165 pounds on the 3 cars.

The defendants admitted that the cars had not been weighed when empty and that this weight, 132,165 pounds, was arrived at by the method above stated of deducting the stenciled weight of the car and applying the minimum of 40,000 pounds on the car loaded below that minimum. They also admitted that if complainant had continued to be a member of the weighing association, the estimated weight of 5.8 pounds per brick would have been accepted.

The mere fact that the complainant had withdrawn from the association would in nowise have affected the weight of the brick, as the determination of the question lies between accepting on the one hand the weights as ascertained by the carriers in the manner above stated, and on the other of taking the estimated weight which the carrier admits would have been accepted had complainant continued to be a member of the association. This method of basing freight charges on estimated weights is not shown to be incorrect and is yet applied to shipments of members of the association.

The principal witness for one of the defendants testified that he had found in his experience that the weight stenciled on freight cars was from 500 to 800 pounds less than the actual weight. Where this is true and weights are arrived at as in the case of these cars, the shipper is charged on from 500 to 800 pounds more freight than is actually loaded into the car.

The Commission finds and concludes that the weights arrived at by accepting the estimated weight of the brick constitute a reasonable basis for the assessment of freight charges.

In addition to the brick a certain amount of straw, used in packing, is placed in the car. Just what the weight of this straw is does not appear from the testimony, but the complainant in its brief stated that it is willing to concede a gross weight of 5.9 pounds per brick to cover also the weight of this straw. In the absence of definite testimony as to the weight of the straw, the Commission is of opinion that 5.9 pounds is a reasonable basis for ascertaining the true weight of the brick and straw.

Using this method of ascertaining the weight and allowing for the minimum of 40,000 pounds on the car which contained only 38,350 pounds, the carrier charged freight on 1,630 more pounds than were actually hauled. In ascertaining the correct charge for the three cars, it should be based on the weight of 130,535 pounds instead of 132,165 pounds.

Pressed brick vary in value from \$10 to \$300 a thousand, while the average is about \$18, there being a comparatively small percentage of those of the high value. Enameled brick vary in price from \$15 to \$300 a thousand, while the average is about \$55, there being also a small percentage of those of the high value named.

Enameled brick appear to be packed and loaded with great care, a twist of straw being placed between them. As a rule, pressed brick are not packed with the same degree of care, and damages and resultant claims therefor arise much more frequently in respect to their transportation.

The ruling of the Commission referred to by Mr. Owen, of the Morgan's Louisiana & Texas Railroad & Steamship Company, apparently for the purpose of offering an excuse for continuing in effect an admittedly unreasonable rate, is a ruling which in no wise goes beyond the plain requirements of the law itself. The matter referred to by the witness has recently been stated in the report of the Commission in the case of the *Laning-Harris Coal & Grain Company v. Missouri Pacific Railway Company et al.*, decided March 9, 1908, 13 I. C. C. Rep., 154, as follows:

In December, 1906, the Commission adopted and issued to all railroads the following ruling:

43. *Reduction of joint rate to equal sum of locals* (effective December 21, 1906).—Where a joint rate is in effect by a given route, which is higher between any points than the sum of the locals between the same points, by the same or another route, and such joint rate has been in effect thirty days or longer, such higher joint rate may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission.

* * * * *

Many informal complaints are received in connection with regularly established through rates which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate except after full hearing

upon formal complaint. It is believed to be proper for the Commission to say that, if called upon to formally pass upon a case of this nature, it would be its policy to consider the through rate, which is higher than the sum of the locals between the same points as prima facie unreasonable, and that the burden of proof would be upon the carrier to defend such higher through rate.

The practice of inserting obscure and general clauses in voluminous tariff publications, to the effect that where a combination of locals, either generally or in specific instances, will make a lower aggregate through rate than the specific joint through rate therein stated, the former will be used, has been found by long experience to result in gross misapplication of the tariffs and in unjust discriminations. Under this practice the individual or concern whose business is large enough to warrant the employment of a traffic or rate expert will be able to secure combinations resulting in lower aggregate charges than can be secured by the smaller or occasional shipper who is not able to employ such an expert and who is required to pay the joint through rate appearing on the face of the tariff. It is self-evident that if such discriminations are to be broken up there can be but one lawful rate in effect at a given time on any commodity, in the one direction, between two points.

It is apparent that there has not been a time since these shipments were made that this defendant with its connections could not have published and established upon one day's notice, under the authority of the Commission, a joint through rate from point of origin to destination on the basis of the sum of the locals. In the ruling referred to the Commission not only issued the authority, as above indicated, to make such changes on the shortest possible notice, but also clearly indicated its belief that in rare instances and under peculiar circumstances only would a joint through rate higher than the sum of the locals be regarded as reasonable.

The Illinois Central Railroad not being a party defendant in this case, the Commission can not prescribe the through rates via the route made up of that line and the Morgan's Louisiana & Texas Railroad & Steamship Company's line. Neither can it in dealing with the rate applied on the shipments in question prescribe a joint through rate via the route over which these shipments moved upon the basis of what might be regarded as a reasonable rate via the shorter line. These shipments were carried a distance of 1,208 miles, and while it is probable that if the lines constituting the longer route are to continue to participate in the business between these points they must accept rates that are not higher than the rates which when applied via the shorter route are reasonable and just, we would not be justified in so ordering or in awarding reparation on past shipments upon that basis. A carrier may in its own interest, if it so desires, carry for a longer distance over its own line than would be necessary if carried between

the same points over the line of its competitor, in order to obtain a portion of the competitive business upon terms that will afford some profit. It does not necessarily follow, however, that a carrier in competing for traffic in this way thereby subjects itself to an order compelling it to do so.

It is the opinion of the Commission upon full hearing and consideration of all the matters presented that the rates complained of and which were charged and collected by the defendant carriers upon these shipments, as well as the class rate of 48 cents per 100 pounds, applicable on such shipments, are unreasonable and unjust in so far as they exceed 30 cents per 100 pounds on enameled brick, carload minimum of 40,000 pounds.

It is also the finding and conclusion of the Commission that the complainant is entitled to an award of reparation in the sum of \$137.05, with interest at the rate of 6 per cent per annum from October 1, 1906, the same being for all the freight charges collected by the defendants on the shipments mentioned in excess of 30 cents per 100 pounds upon the gross weight of 130,535 pounds, this being the true weight, as we have found, of the brick contained in these 3 cars, after making due allowance for the application of the proper minimum in accordance with the published tariffs.

It is our further conclusion that the just and reasonable rate as the maximum to be charged on enameled brick in future from Cheltenham, Mo., to New Iberia, La., over the route composed of defendants' lines as herein stated, should not exceed 30 cents per 100 pounds, carload minimum of 40,000 pounds.

An order will be entered in accordance with the findings and conclusions herein stated.

No. 1218.

NEBRASKA STATE RAILWAY COMMISSION

v.

UNION PACIFIC RAILROAD COMPANY.

Submitted February 29, 1908. Decided April 6, 1908.

1. Complaint alleges that rates charged by defendant for the transportation of coal from Rock Springs and Hanna, Wyo., to points in Nebraska, are unreasonable.
2. The fact that there is competition for the purchase of this coal between Nebraska communities and communities in Wyoming and Utah affords no justification to the carrier for charging more than a reasonable rate for the transportation of such coal as the Nebraska people may succeed in buying. No justification exists for the maintenance of a blanket rate on coal to all points on defendant's lines in Nebraska.
3. The rate of \$4.50 per ton applying on lump coal from Rock Springs and \$3.50 per ton from Hanna to points in Nebraska on the line of defendant between the Nebraska-Wyoming boundary and Grand Island, including the latter point and points on the branch line from Kearney to Callaway, Nebr., are unjust and unreasonable. Just and reasonable rates prescribed.

H. J. Winnett, J. A. Williams, and H. C. Clarke, jr., members
Nebraska State Railway Commission, for complainant.

Charles E. Clapp for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The petition filed in this case alleges that the rates of the defendant railway for the carriage of coal from mines at Rock Springs and Hanna, Wyo., to points on the defendant's line in Nebraska are unjust and unreasonable.

The defendant operates the only railroad reaching the coal mines at Rock Springs and Hanna. Its line extends eastward from these points to Council Bluffs, Iowa, traversing the entire state of Nebraska. The distance from Smeed, the westernmost station on this railway

in Nebraska, to Omaha is 468 miles. For 314 miles of this distance eastward from the Wyoming line the Union Pacific has railway competition at three points only, viz, Sidney, Kearney, and Grand Island, Nebr.

Defendant has a branch line 65.5 miles in length extending from Kearney, northwesterly to Callaway, Nebr. Other branch lines leave the main line at Grand Island, at Central City, at Columbus and at Valley.

The published tariffs of defendant name a uniform rate of \$4.50 per ton on lump coal from Rock Springs and \$3.50 from Hanna to all stations on the Union Pacific in Nebraska.

The distance from Rock Springs to Smeed is 341.5 miles, and to Omaha, 809.2 miles. From Hanna to Smeed the distance is 182.5 miles, and from Hanna to Omaha 650.2 miles.

The defendant makes the following rates on lump coal from Rock Springs to points in Wyoming, Colorado, and Kansas:

To Cheyenne, Wyo., a distance of 293 miles, and Denver, Colo., a distance of 400 miles, and points between these two cities, a blanket rate of \$2.30 per ton.

To all points on the Colorado division of defendant's road between Denver and Chemung, Colo. (592.3 miles), a blanket rate of \$3.75.

To all points on the line of defendant between Weskan (598.6 miles), and Oakley, Kans. (663 miles), a blanket rate of \$4.

To all points between Oakley and Bavaria, Kans. (845.5 miles), a blanket rate of \$4.25.

To Kansas City, Mo. (1,040 miles), \$4.50.

From Hanna the following rates on lump coal are maintained by defendant:

To Cheyenne (134 miles), and Denver (241 miles), and intermediate points, \$1.60.

To all points between Denver and Chemung (433 miles), \$3.

To Weskan, Kans. (439.6 miles), and points beyond, to and including Oakley, Kans. (504 miles), \$3.25.

The average rates per ton per mile, as published, from Rock Springs and Hanna to points in the states of Nebraska, Colorado, and Kansas are as follows:

<i>From Rock Springs</i>		Mills.
To all open stations on Union Pacific main line (45 in number) between Smeed and Omaha.....		8.2
To all open stations on main line (15 in number) between Smeed and North Platte.....		10.7
To all open stations on main line (29 in number) between Smeed and Grand Island.....		9.16
To all open stations between Cheyenne and Denver.....		6.3
To all open stations between Denver and Kansas state line.....		5.2
To all open stations on main line in Kansas (45 in number) Colorado line to Kansas City.....		5.09

From Hanna.

	Mills.
To all open stations on main line between Smeed and Omaha.....	9.3
To all open stations on main line between Smeed and North Platte.....	13.6
To all open stations on main line between Smeed and Grand Island.....	11.8
To all open stations between Cheyenne and Denver.....	6.6
To all open stations between Denver and Kansas state line.....	5.2
To all open stations on main line in Kansas between Colorado state line and Kansas City.....	5.27

Comparative rates.

To Kansas City from Rock Springs.....	4.3
To Kansas City from Hanna.....	3.9
To Omaha from Rock Springs.....	5.6
To Omaha from Hanna.....	5.4

Complainant, for purposes of comparison, showed that anthracite coal is carried from Chicago to Omaha, a distance of 492 miles, for \$2.10 per ton, or a rate per ton per mile of 4.27 mills. Anthracite coal is also carried from Duluth to Omaha, a distance of 528 miles, for \$2.10 per ton, or at a rate per ton per mile of 3.98 mills.

The Chicago, Rock Island & Pacific Railway Company names a rate of \$2.50 per ton on lump coal from Roswell, Colo., to Omaha, a distance of 579 miles, which rate yields a revenue of 4.3 mills per ton per mile.

It was also shown that in 1902 the defendant published and for some time maintained a rate of \$3.50 per ton on lump coal from Rock Spring to Omaha, this rate, however, being restricted to 10-car lots. On March 29, 1907, effective May 1, 1907, defendant published a tariff quoting a rate of \$3.75 on lump coal in 10-car lots from Rock Springs to Omaha, and also a rate of \$3.25 on 10-car lots from Hanna to Omaha. By another tariff on the same date, a rate of \$3.90 from Rock Springs, and of \$3.40 from Hanna, was made on 10-car lots to Lincoln and Fremont, Nebr., with the privilege of dividing a shipment between the two cities. These rates were all canceled on June 30, 1907. The 10-car rates to Omaha afforded a revenue of 4.6 mills per ton per mile and 5 mills per ton per mile, respectively. Concerning these 10-car lot rates it was testified by the general freight agent of the defendant that they were made for the purpose of "dumping" coal during a time of overproduction at the mines. These rates had the result desired, and practically all the wholesale dealers in Omaha took advantage of them. It appears that these rates were restricted to 10-car shipments for the reason that defendant desired to confine their application to the territory where competition was strongest, viz, the Missouri River.

From a statement filed by the defendant it appears that the entire number of cars of bituminous coal handled by it in Nebraska during 1907 was 6,001. Of this number 2,421 were from Rock Springs and 987 from Hanna. The statement shows that during 1907 the defendant delivered to the stations on the main line in western Nebraska, to and including Kearney, a station 196 miles west of Omaha, 714 cars of coal from Rock Springs, 173 from Hanna, and 166 from other points, as follows:

Station.	From Rock Springs.	From Hanna.	From other points.
Kimball.....	19	5	0
Potter.....	5	1	0
Sidney.....	37	8	2
Lodge Pole.....	14	3	1
Big Springs.....	9	0	7
Ogallala.....	31	4	2
Parson.....	3	1	6
Sutherland.....	18	2	1
Herahey.....	16	0	-1
North Platte.....	166	30	62
Maxwell.....	17	1	2
Gothenburg.....	23	16	18
Willow Island.....	4	0	0
Cozad.....	55	13	4
Lexington.....	95	13	10
Overton.....	16	16	11
Elm Creek.....	30	4	2
Kearney.....	156	56	57
Total.....	714	173	166

The evidence shows that coal shipments from Rock Springs and Hanna, destined to Colorado, Kansas, and Wyoming points south of Cheyenne, leave the main line of the Union Pacific Railroad at Cheyenne. It also appears that the grades from Cheyenne to Nebraska points are much easier than the grades from Cheyenne to Denver, Colo., and thence to Kansas points. For instance, the working time-cards of the Union Pacific filed by defendant with the Nebraska State Railway Commission show that an engine with a 20-inch cylinder and a 28-inch stroke is estimated to be able, under normal conditions, to haul the following loads from Cheyenne eastward to Omaha:

	Tons.
Cheyenne to Archer, a distance of 8 miles.....	1,200
Archer to Sidney.....	2,300
Sidney to North Platte.....	2,300
North Platte to Grand Island.....	2,300
Grand Island to Omaha.....	1,900

As compared with this, the tonnage capacity of the same engine, under the same conditions, from Cheyenne to southern Wyoming,

Colorado, and Kansas points is given by these same time-cards as follows:

	Tons.
Cheyenne to Carr, Wyo., on a slow train.....	500
Cheyenne to Carr, Wyo., on a fast train.....	400
Carr, Wyo., to Denver, on a slow train.....	1,500
Carr, Wyo., to Denver, on a fast train.....	1,000
Denver to Cheyenne Wells, on a slow train.....	850
Cheyenne Wells to Ellis, Kans.....	1,000
Ellis, Kans., to Ellsworth, Kans.....	1,300
Ellsworth, Kans., to Salina, Kans.....	800
Salina, Kans., to Kansas City.....	2,300

The haul from the mines into Cheyenne is likewise more difficult and expensive than the haul eastward from Cheyenne to and through Nebraska.

The entire mileage of the defendant company is 3,031.41, of which 983.48 miles are within the state of Nebraska. The number of tons of freight handled by the Union Pacific Company during the year ending June 30, 1907, was 8,830,686. Of this tonnage, it handled on its Nebraska lines 4,258,938 tons. It was also shown that the average number of freight cars hauled per train mile in Nebraska is 35.06, while the average number of cars per train mile over the system is 31.02. The number of loaded freight cars hauled per train mile in Nebraska is 26.58, as against 23.30 over the entire line. The net income of the Union Pacific system for the last fiscal year was \$19,678,798.80.

Defendant's explanation of the existence of blanket rates for all Nebraska points on coal transported from Rock Springs and Hanna, as given by its general freight agent, is as follows:

That rate was established from Rock Springs and Omaha for the purpose of marketing that coal at a rate that would at least let us in without loss as against the coal that comes from the east and south. Had it not been for the competitive conditions that obtained at Omaha, I have no doubt that the Rock Springs and Hanna rates to Omaha would have been higher than they were when they were originally established. Having established the rate to meet a competitive condition, it would naturally follow in the readjustment of rates to the intermediate points that that rate should blanket back to cover the intermediate territory where the competition decreases as you go west.

Being asked why the rates were not made on the same plan for Kansas points, the general freight agent replied that—

the making of rates for Kansas points was more for the purpose of affording dumping ground for the Wyoming coal when there was a surplus than with any particular hope of carrying a particular tonnage to that state.

It was also testified that conditions in Kansas are different from those in Nebraska, Kansas being a producer of coal at some points.

It was testified by the freight traffic manager of defendant that the rates from Rock Springs and Hanna to Omaha are fair to the carrier and to the public. Being asked:

Do you regard the rate of \$4.50 from Rock Springs to towns in the western part of the state of Nebraska as a fair rate?

The freight traffic manager replied:

If there was any considerable movement of business that would not be the rate. With a larger tonnage the rate would have been reduced a long time ago.

Defendant also showed that it had made emergency rates on coal from the Missouri River to the west in order to relieve the coal famine which threatened in the winter of 1906-7. It also showed that it had purchased much coal from mines east of the Missouri River and had stored as much as 7,050 tons as far west as Cheyenne, Wyo., hauling engine coal even as far west as Green River, Wyo. Formerly the Union Pacific used a far larger percentage of Rock Springs and Hanna coal for its engines than it does to-day. Defendant also showed that there was last year a shortage of coal in the country west of these Wyoming mines. The explanation of the purpose of this testimony was that it was offered upon the theory that as the coal is needed in the country west of Nebraska a lower rate should not be made for its transportation to Nebraska points.

The testimony shows the rate on pea coal from Rock Springs to Omaha to be \$3.50 per ton; while from Hanna to Omaha the rate is \$3 per ton. The testimony also shows that the rate to Omaha from Rock Springs on slack coal is \$3.25 per ton, while from Hanna it is \$2.75 per ton. An examination of the tariffs on file with the Commission shows that the rate of \$3.50 per ton on pea coal and of \$3.25 per ton on slack coal from Rock Springs applies to all stations on the main line of the Union Pacific from Omaha to Mercer, both points included, Mercer being 41 miles west of Omaha and 768.2 miles east of Rock Springs. This rate also applies to all branch line stations. From Rock Springs to all stations on the main line in Nebraska, west of Mercer, the rates are: Pea coal, \$3.25; slack coal, \$3. From Hanna to Omaha the rates are: Pea coal, \$3; slack coal, \$2.75. These rates apply to all stations on the main line east of Kearney (613.2 miles from Rock Springs and 196 miles from Omaha). Kearney and all Nebraska points west thereof on the main line pay a rate of \$2.50 per ton on pea coal, and \$2.25 per ton on slack coal for the haul from Hanna.

These rates upon pea coal and slack coal, however, were but incidentally referred to in the complaint, were not mentioned in the answer, and were treated but superficially in the testimony and argument. They are made up on a different basis from that underlying

the lump-coal rates. Instead of one zone for the entire state there are two zones from Rock Springs, with the boundary between these two zones just east of Fremont, and two entirely different zones from Hanna, with the boundary between them just east of Kearney. As the conditions affecting these rates have not been developed to the Commission, no order will be here made concerning them. It will be noted, however, that the lump-coal rates named by the order here are less to Sidney and points west thereof in Nebraska than the present published pea-coal and slack-coal rates. This relation of rates can not be allowed. The conditions which, in our opinion, warrant the reduction upon lump coal to the western part of Nebraska apply also to the rates upon pea coal and slack coal wherever our order may result in leaving such rates equal to or higher than the rates upon lump coal. It is expected that the defendant will make a reasonable difference between these rates and the lump-coal rates. If it should not do so, however, complainant may bring the matter before the Commission by supplemental complaint herein or by a new complaint, as it may be advised.

We are not convinced that the rates on lump coal of \$4.50 from Rock Springs to Omaha and of \$3.50 from Hanna to Omaha are excessive. It is apparent from the testimony, however, that the rates on lump coal from Rock Springs and Hanna, Wyo., to points on the line of defendant as far east as Grand Island, Nebr., are unjust and excessive and should be reduced. Moreover, it appears that no justification exists for the maintenance of a blanket rate on lump coal to all points in Nebraska. It is also apparent that the fact that there is competition for the purchase of this coal between Nebraska communities and communities in Wyoming and Utah is no justification whatever for allowing this carrier to charge more than a reasonable rate for the transportation of such coal as the Nebraska people may succeed in buying.

Under the present system of rate making the greatest injustice is done to the Nebraska towns nearest the Wyoming line. The difference between the rates on this coal to Cheyenne and the rates to towns just east of Cheyenne is great, and this difference is wholly unexplained. For instance, the rate of \$2.30 per ton on lump coal from Rock Springs to Cheyenne (or \$0.00785 per ton per mile), being voluntarily established by the defendant, must be taken to be compensatory for the haul of 293 miles to that place, which is shown to be more difficult and more expensive per mile than any part of the haul between Cheyenne and Omaha. The presumption that this rate to Cheyenne is compensatory is made still stronger by the fact that the defendant makes the same rate of \$2.30 per ton to Denver, which is 107 miles farther distant, or 400 miles from Rock Springs. The dis-

tance from Cheyenne to Smeed, Nebr., is 48.5 miles only, yet the rate on lump coal from Rock Springs to Smeed is \$2.20 per ton greater than the rate to Cheyenne. That is to say, for the haul from Cheyenne to this Nebraska town, defendant charges at a rate slightly in excess of 4½ cents per ton per mile. It is difficult to understand why the rate per ton per mile from Rock Springs to Smeed should be higher than the rate to Cheyenne, yet on the basis of the Cheyenne rate (\$0.00785 per ton per mile) the rate per ton to Smeed would be \$2.68 instead of \$4.50, as at present.

Similarly, the rate from Hanna to Cheyenne, a distance of 134 miles, is \$1.60 per ton, or \$0.012 per ton per mile. The rate from Hanna to Smeed is \$1.90 per ton higher than the rate to Cheyenne, or 3 cents and 9 mills per ton per mile for the added haul of 48½ miles east of Cheyenne. Were the rate to Smeed to be reduced to the rate per ton per mile now charged to Cheyenne, it would be \$2.18 per ton, instead of \$3.50, as at present. That this would not be unjust is shown by the fact that defendant's rate to Denver from Hanna, a distance of 400 miles, is \$1.60 per ton, the same as to Cheyenne.

The Commission does not feel prepared, nor is it necessary, to make another schedule naming the rate upon lump coal to each point upon the line of defendant in the state of Nebraska. It is preferred that the defendant should be left free to continue the zone system as here modified or to adjust its rates according to distance within the limits here ordered.

It is the opinion of the Commission, after full hearing upon the complaint herein, that the rates upon lump coal of \$4.50 per ton from Rock Springs, Wyo., and of \$3.50 per ton from Hanna, Wyo., to points in Nebraska on the line of defendant between the Nebraska-Wyoming boundary and Grand Island, including the latter point and including points on the branch line from Kearney, Nebr., to Callaway, Nebr., are unjust and unreasonable. Further, it is the opinion of the Commission that the following are the just and reasonable rates to be hereafter observed by the defendant as the maxima to be charged by it for the transportation of lump coal in carloads:

	From Rock Springs, Wyo.	From Hanna, Wyo.
To Sidney, Nebr., and points on the line of defendant intermediate between Sidney and the Nebraska-Wyoming boundary.....	<i>Per ton.</i> \$3.00	<i>Per ton.</i> \$2.25
To North Platte, Nebr., and points in Nebraska on the line of defendant intermediate between North Platte and Sidney.....	3.50	2.50
To Grand Island, Nebr., and points on the line of defendant intermediate between Grand Island and North Platte, including all points on defendant's branch line from Kearney, Nebr., to Callaway, Nebr.....	4.00	3.00

An order will be entered in accordance with these conclusions.

No. 1064.

DETROIT CHEMICAL WORKS

v.

NORTHERN CENTRAL RAILWAY COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; PENNSYLVANIA COMPANY; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; TOLEDO & OHIO CENTRAL RAILWAY COMPANY; KANAWHA & MICHIGAN RAILWAY COMPANY; DETROIT, TOLEDO & IRONTON RAILWAY COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, AND MICHIGAN CENTRAL RAILROAD COMPANY.

Submitted January 7, 1908. Decided March 16, 1908.

The rate of \$2.32 per ton of 2,240 pounds on imported iron pyrites from Baltimore to Detroit is now and was during the time it was in effect unreasonable and unjust, and should not exceed \$2.21 per ton. Reparation awarded.

John Davis and Edward S. Davis for complainant.

George S. Patterson for Northern Central Railway Company, Pennsylvania Railroad Company, Pennsylvania Company, and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

John G. Wilson for Baltimore & Ohio Railroad Company.

Benjamin S. Warren for Detroit, Toledo & Ironton Railway Company.

O. E. Butterfield for Lake Shore & Michigan Southern Railway Company and Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This is a complaint that the rate of \$2.72 per ton of 2,240 pounds in carloads charged by defendants for the transportation of iron pyrites (sulphide of iron) from Baltimore, Md., to Detroit, Mich., is unjust and unreasonable and subjects complainant to undue prejudice and disadvantage when compared with chemical works similar to the one operated by it in Detroit, owned by others in various cities. Reparation is asked.

Complainant is a corporation organized under the laws of Michigan, with a capital stock of \$300,000, and is engaged at Detroit in the manufacture and sale of various chemicals, and incidental thereto ships iron pyrites and other raw materials over defendants' lines of railway from Baltimore to Detroit. The principal article of commerce manufactured and sold by complainant is sulphuric acid, in the production of which iron pyrites is a constituent of about 50 per cent of the output of acid, or 1 ton of pyrites to $1\frac{1}{2}$ tons of acid. The bulk of pyrites used in this country in the manufacture of sulphuric

acid is imported from Spain. An inferior quality is obtained in this country which is largely used in the manufacture of coarse forms of acid for fertilizing purposes, but for the better grade is little used. The domestic product does not contain over 70 per cent of sulphur found in the foreign product.

Imported pyrites is sold at the seaboard at about 12½ cents per unit of sulphur and the average price is \$5.50 per ton of 2,240 pounds. A sample of pyrites is taken from a ship at an American port to a chemist, who analyzes it, determines the unit value in sulphur, and it is sold on that basis. Domestic manufacturers of sulphuric acid usually contract for a year's supply in the fall with an agent of a foreign producer or importer, and the agent supplies a number of customers. Pyrites is loaded in bulk in box cars to their carrying capacity. Shipments of this traffic from Baltimore by complainant are in 600 to 1,800 ton lots and are handled as may be most convenient for the carrier.

The sulphuric acid plant of complainant was erected in 1902-3 and has a capacity of about 13,000 tons of acid per year. During the year 1902 the rate on imported pyrites from Baltimore to Detroit was \$1.56 per gross ton, and the complaining company made a contract with the Baltimore & Ohio Railroad Company by which the latter agreed to transport and did transport such traffic at that rate for one year from January 1, 1903.

The import rate on iron pyrites in carloads from Baltimore to Detroit was at the time the complaint was filed \$2.72 per ton of 2,240 pounds, and that rate was maintained until January 10, 1908. The varying rates per ton from January 1, 1903, to March 18, 1907, on such shipments from Baltimore, Md., to Detroit, Mich., Cincinnati, Ohio, St. Louis, Mich., and Chicago, Ill., are shown by the following table:

	From Baltimore, Md., to—			
	Detroit, Mich.	Cincinnati, Ohio.	St. Louis, Mich.	Chicago, Ill.
January 1, 1903.....	\$1.56	\$1.66	\$1.90	\$2.00
January 1, 1904.....	1.74	2.01	2.28	2.40
February 1, 1905.....	1.74	2.00	2.00	2.00
March 12, 1905.....	1.74	2.00	1.90	2.00
January 1, 1906.....	2.68	3.00	3.00	3.00
April 16, 1906.....	1.74	2.00	2.00	2.00
January 1, 1907.....	2.72	3.10	3.48	3.65
March 18, 1907.....	2.72	2.83	2.83	2.83

Upon promulgation of the tariffs of January 1, 1906, whereby the rate from Baltimore to Detroit on this commodity was increased from \$1.74 to \$2.68 per ton, the complainant, after a protest to the railroads, made partial arrangements to ship pyrites by ocean to Montreal, thence via Welland Canal and Lakes, but upon the reduction in the rate April 16, 1906, to \$1.74 per ton, negotiations to that end

were abandoned. Shipments to Montreal necessitate the purchase by complainant of a ship load of from 4,000 to 5,000 tons, transfer to canal and lake bottoms, and a largely increased storage capacity. The rates by Montreal are somewhat less than the \$1.74 rate from Baltimore, but conditions at complainant's plant dictate shipments by rail under a higher rate.

The complainant company sells its acid product at various points in Illinois, Ohio, Indiana, Michigan, and Wisconsin and delivers it in tank cars which it owns. In making sales it comes in competition with the St. Louis Chemical Company, with a capital stock of \$300,000, and a plant at St. Louis, Mich., with a capacity of about 12,000 tons of acid per year; the General Chemical Company, commonly called the chemical trust, with a capital stock of \$18,000,000 and plants of large capacity in Chicago, Ill., and Buffalo, N. Y.; the Grasselli Chemical Company, with a capital stock of \$6,000,000 and large plants at East Chicago, Ind., and Cleveland, Ohio; and the Contact Process Company, with large capital, the amount of which does not appear, and extensive plants at Buffalo and Cincinnati.

Iron pyrites of fair quality is found to a limited extent at Charle-mont, Mass., and the rate from that place to Detroit had been for many years prior to and was at the time of filing the complaint \$2.25 per ton of 2,240 pounds. The import rate on pyrites from Baltimore to Buffalo is now and has been continuously for many years \$1.40 per ton. The import rate on the same traffic from the Gulf of Mexico to Chicago is \$2.40 per ton and to Cincinnati \$1.93 per ton. There is no production of pyrites at Baltimore. It occasionally occurs that an importer may not find sale for all he receives, or the product is brought over in ships as ballast, and after remaining on the docks for some time is disposed of as domestic product.

The following statement shows carload rates on import traffic from Baltimore to Detroit prior to January 1, 1907, up to and including January 10, 1908, of the same general nature as iron pyrites.

Rates in cents per 100 pounds, except as noted.

Commodities.	Apr. 16, 1906, Pa. G-2672.	Jan. 1, 1907, Pa. G-2904 (B).	Jan. 6, 1907, Pa. G-2907.	Mar. 18, 1907, Pa. G-2932.	Apr. 29, 1907, Pa. G-2964.	July 15, 1907, Pa. G-2964 (A).	Jan. 10, 1908.
Clay.....	10	12	(a)	9½	(a)	(a)	12
Fullers earth.....	10	12	(a)	9½	(a)	(a)	12
Gravel spar.....	¢\$2.21	¢\$2.72	(a)	¢\$2.72	(a)	(a)	¢\$2.21
Kalnit.....	10	12	(a)	12	(a)	(a)	(a)
Kaolin.....	10	12	(a)	12	(a)	(a)	(a)
Manure salt.....	10	12	(a)	9½	(a)	(a)	15
Ore:							
Chrome.....	¢\$2.21	¢\$2.72	(a)	¢\$2.72	(a)	¢\$2.21	(a)
Emery.....	14		(a)	17	(a)	(a)	(a)
Iron.....	¢\$2.21	¢\$2.52	¢\$2.72	¢\$2.72	(a)	¢\$2.21	(a)
Manganese.....	¢\$2.21	¢\$2.72	(a)	¢\$2.72	(a)	¢\$2.21	(a)
Pyrites, iron.....	¢\$1.74	¢\$2.72	(a)	¢\$2.72	(a)	(a)	(a)
Spiegel eisen or spiegel iron....	¢\$2.68	¢\$2.72	(a)	¢\$2.72	(a)	(a)	(a)

^a No change.

^b Rate per ton, 2,240 pounds.

Examination of tariffs on file with the Commission shows that the increase of import rates generally made January 1, 1907, was about 20 per cent over the rates that prevailed prior thereto. The increase in the rate on pyrites, Baltimore to Detroit, was more than 55 per cent. By that tariff the rate to Detroit was 53 cents per ton less than to Chicago. By the tariff of March 17, 1907, the Detroit rate was made 11 cents less than to Chicago. Prior to that date for many years the rate to Detroit averaged 44 cents a ton less than to Chicago.

The defendants' traffic officials testified that there were three main causes for the increase of import rates made January 1, 1907, namely: A marked increase in the cost of labor and materials and general increased operating expenses during the year 1906; the very low rates in force on import traffic; and the complaints from various sources that domestic rates were too high when compared with import rates on the same commodities. At that time the rate on pyrites was made on the basis of \$4.25 per ton New York to Chicago, which, with the differential of 60 cents in favor of Baltimore, made the rate from the latter place to Chicago \$3.25 per ton. This rate was not scaled to Detroit, a 78 per cent point, but an arbitrary rate of \$2.72 was applied. The \$3.25 rate was fixed at Chicago with the hope that roads leading from the Gulf of Mexico to Chicago would put in effect a similar increase in their rates. This was not done, and March 17, 1907, the defendants finding that the rate maintained by the Gulf lines was \$2.57 per ton reduced the Chicago, Ill., Cincinnati, Ohio, and St. Louis, Mich., rate to \$2.83 per ton. There is but little evidence that there is now or ever has been any movement of pyrites via the Gulf to Chicago, but it is earnestly insisted that the Chicago rate is forced by water competition.

The short line distance from Baltimore to Detroit is 649 miles, and the distance via the Baltimore & Ohio and the Detroit, Toledo & Ironton Railroad, over which moved the traffic in question from Baltimore to Detroit, is 714 miles. The \$2.72 rate of which complaint is made yields the carriers via short line 4.19 mills per ton per mile and via the Baltimore & Ohio and Detroit, Toledo & Ironton 3.84 mills per ton per mile. It is insisted that this is so low a rate that it should not be held to be unreasonable.

Since the evidence in this case was taken and on January 10, 1908, defendants have put in force the following rates per ton of 2,240 pounds on imported pyrites from Baltimore to—

Detroit, Mich.....	\$2.21
Cincinnati, Ohio.....	2.53
St. Louis, Mich.....	2.86
Chicago, Ill.....	3.00

It is stated by the traffic manager of the Pennsylvania Railroad Company that the reduced rates were impelled by the opening of new

sources of production of pyrites in Canada and the increased use of sulphur in the manufacture of sulphuric acid.

It is conceded by complainant that the rate of \$1.40 per ton on imported pyrites from Baltimore to Buffalo is made to meet canal competition on shipments from New York. So far as the evidence shows, there is no movement of the traffic between Baltimore and Buffalo.

The amount of pyrites shipped by complainant from Baltimore to Detroit on which \$2.72 per ton was paid is 2,691 tons. On this amount the Baltimore & Ohio Railroad Company received 70 per cent of the rate and the Detroit, Toledo & Ironton Railway Company 30 per cent.

When considered by itself, the rate of \$2.72 per gross ton for transportation of pyrites from Baltimore to Detroit is rather low. It yields a revenue of but 3.84 mills per ton per mile. The rate per ton per mile, however, is not the only test to be applied to a rate on any particular commodity to determine whether it is reasonable or unreasonable; it is only one element among numerous others which must be taken into consideration. It was held by the Commission in *Business Men's Association of the State of Minnesota v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*, 2 I. C. C. Rep. 52, syllabus, that—

The method of testing the freight rates of a railroad by the rate per ton per mile is one by which these rates may be brought down to the narrowest point of scrutiny, and in this sense is valuable, but it is like looking at them with a microscope, for it ignores all other tests except that which it alone furnishes, and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, no matter how compulsory or imperious these may be, and for this reason it can not be considered a controlling rule in determining the reasonableness of rates.

To determine the reasonableness and justness of any freight rate made by a railroad company, all the surrounding circumstances and conditions must be considered as well as the rights of the shipper, and if these circumstances and conditions are so compulsory and imperious that they fairly and justly exercise any controlling influence in the making of the rate, they can not be disregarded in a proceeding in which the reasonableness and justness of the rate is presented for determination.

The average receipts per ton per mile on all traffic transported by the Baltimore & Ohio Railroad Company for the year ending June 30, 1907, were 5.70 mills and like receipts of the Detroit, Toledo & Ironton Railway Company for the same period were 4.36 mills. In reaching these totals all classes of commodities transported are of course included. It is to be borne in mind that iron pyrites is a low grade commodity and is transported in a manner to yield a profit to carriers under a very low rate. It is transported in large quantities, is loaded to carrying capacity of cars, and is moved at the convenience of carriers. It is in every way a most desirable

species of traffic. When compared with commodities of its general class the rate of \$2.72 is above the average.

The fact that a long-established rate yields but small receipts per ton per mile can not justify its increase to such an extent or in such a manner as to be unjust to any shipper. Circumstances and conditions may be such that an increase in a particular rate may be unreasonable, although after the increase the rate will yield low receipts per ton per mile. The complaining company purchased its year's supply of pyrites in the fall of 1906, and contracted for the sale of its products for the ensuing year at the same time. The increase of 98 cents per ton in the freight rate on pyrites, effective January 1, 1907, represents about the usual profit per ton on sulphuric acid.

Where a railroad company has made and maintained for a long time a rate for the transportation of a certain commodity, such rate is presumed to be remunerative. If the rate is increased, the presumption is that the increase is unreasonable. To this general effect there are a number of decisions of the Commission. *Central Yellow Pine Association v. Illinois Central Railroad Company et al.*, 10 I. C. C. Rep., 505; *Tift v. Southern Railway Company et al.*, 10 I. C. C. Rep., 548. Where an industry has been required to pay for a long period of time rates of freight on raw material which bear certain relations to rates charged to competitors at other points, a marked change in such relations of rates in favor of competing industries can not be made without an attendant presumption of undue discrimination.

The higher rate to Detroit, effective January 1, 1907, has been voluntarily reduced by the carriers 51 cents per ton, effective January 1, 1908. Relations between rates to Chicago and Cincinnati have been made more favorable to Detroit than the average during a period of over eight years. The presumption is that the rate of \$2.21 per ton of 2,240 pounds now effective for transportation of pyrites from Baltimore to Detroit is remunerative to the carriers.

Under all the circumstances shown in this case, the Commission is of opinion that the rate of \$2.72 per ton of 2,240 pounds on imported pyrites from Baltimore to Detroit is now and was during the time it was in effect unreasonable and unjust, and that the rate for such traffic should not exceed \$2.21 per gross ton.

Considering the discrimination against Detroit prior to the present adjustment of rates and the circumstances under which the business of manufacturing sulphuric acid was entered into by the complaining company, we are also of opinion that reparation to the extent of 51 cents per ton should be awarded on the amount of pyrites shipped by it from Baltimore to Detroit on which was paid the rate found herein to be unreasonable. An order will be entered accordingly.

No. 1206.

DETROIT CHEMICAL WORKS

v.

ERIE RAILROAD COMPANY; LEHIGH VALLEY RAILROAD COMPANY; WABASH RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; PITTSBURG, FORT WAYNE & CHICAGO RAILWAY COMPANY, AND DETROIT, TOLEDO & IRONTON RAILWAY COMPANY.

Submitted January 7, 1908. Decided April 6, 1908.

The rate of \$3.32 per ton of 2,240 pounds on imported iron pyrites in carloads from New York to Detroit is now and was during the time it was in effect unreasonable and unjust, and should not exceed \$2.81 per ton. Reparation awarded.

Edward S. Davis for complainant.

George S. Patterson for Pennsylvania Railroad Company; Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, and Michigan Central Railroad Company.

H. W. Clark for Lehigh Valley Railroad Company.

H. Murray Andrews for Erie Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

It is alleged in this complaint that the rate of \$3.32 per ton of 2,240 pounds charged by defendants for the transportation of iron pyrites in carloads from New York City, N. Y., to Detroit, Mich., is unjust and unreasonable and subjects complainant to undue prejudice and disadvantage when compared with chemical works owned and operated by others in various cities similar to the one operated by it in Detroit. Reparation is asked.

The case presents the same issues that were presented in the case of this complainant against Northern Central Railway Company et al. decided by the Commission March 16, 1908, 13 I. C. C. Rep. 357. Facts respecting the nature and conduct of complainant's business, 13 I. C. C. Rep.

the character of pyrites, the manner of making shipments thereof, and the situation of complainant with respect to competitors in other cities are fully stated in that decision and need not be restated in detail here. It is sufficient for the purposes of this case to make the following findings of fact:

Complainant late in 1902 and early in 1903 erected a sulphuric-acid plant in the city of Detroit. In the manufacture of the acid iron pyrites imported from Spain is used. A portion of this product consumed by complainant during the year 1907 was shipped to Detroit from New York City over defendants' lines of railroad. The complainant contracted for its supply of pyrites with an importer in the fall of 1906 for the ensuing year. At the time complainant's factory was completed and during the year 1903 the rate on pyrites from New York to Detroit was \$2.16 per gross ton. At no time from 1902 to January 2, 1907, was the rate in excess of \$2.34 except for a short time in 1906, when on protest of complainant and on his negotiations looking toward shipments by ocean, river, and lakes from Spain, an increased rate was reduced. Pyrites is a low-grade commodity, is loaded in bulk in box cars to the carrying capacity thereof, is shipped at convenience of carriers, and yields profit to them on a comparatively low rate.

The import rate on pyrites in carloads from New York to Detroit was at the time the complaint was filed \$3.32 per ton of 2,240 pounds, and that rate was maintained until January 9, 1908. The varying rates per ton from April 26, 1902, to April 15, 1907, on such shipments from New York to Detroit, Cincinnati and Cleveland, Ohio; St. Louis, Mich., and Chicago, Ill., at which points sulphuric-acid plants are located, are shown by the following table:

Date.	From New York, N. Y., to—				
	Detroit, Mich.	Cincinnati, Ohio.	Cleveland, Ohio.	St. Louis, Mich.	Chicago, Ill.
April 26, 1902.....	\$2.47½	\$2.47½	\$2.07½	\$2.47½	\$2.47½
January 1, 1903.....	2.16	2.26	2.16	2.16	2.60
January 1, 1904.....	2.34	2.61	2.22	2.88	3.00
January 1, 1905.....	2.34	2.61	2.22	2.88	3.00
January 1, 1906.....	3.28	3.60	2.94	3.60	3.60
April 23, 1906.....	2.34	2.60	2.22	2.60	2.60
January 2, 1907.....	3.32	3.70	3.02	4.08	4.25
April 15, 1907.....	3.32	3.43	3.02	3.43	3.43

When the rates of January 2, 1907, were put into effect the relation of complainant to its competitors with respect to rates which had been maintained for years was not materially disturbed, but the reduction made to Chicago, Ill., St. Louis, Mich., and Cincinnati, Ohio, by the tariff of April 15, 1907, left complainant at a comparatively great disadvantage.

January 9, 1908, the defendants voluntarily reduced the rate to Detroit 51 cents per ton, and established the following rates from New York to—

Detroit, Mich.	Cincinnati, Ohio.	Cleveland, Ohio.	St. Louis, Mich.	Chicago, Ill.
\$2.81	\$3.31	\$2.56	\$3.46	\$3.60.

Under the circumstances of this case and for reasons given in the case cited *supra*, we are of opinion that the rate of \$3.32 per ton of 2,240 pounds on imported pyrites from New York to Detroit is now and was during the time it was in effect unreasonable and unjust, and that the rate for such traffic should not exceed \$2.81 per gross ton.

The amount of pyrites shipped by complainant from New York to Detroit on which \$3.32 per ton was paid is 2,402 tons. On 1,429 tons the Erie Railroad Company received 72.3 per cent and the Wabash Railroad Company 27.7 per cent of this rate; on 494 tons the Lehigh Valley Railroad Company received 66 per cent and the Wabash Railroad Company 34 per cent; and on 479 tons the Lehigh Valley Railroad Company received 60.4 per cent and the Michigan Central Railroad Company 39.6 per cent.

Under all the circumstances shown we are also of opinion that reparation to the extent of 51 cents per ton should be awarded complainant on the amount of pyrites shipped by it from New York to Detroit on which was paid the rate found herein to be unreasonable. An order will be entered accordingly.

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No. 1343.

D. B. HUSSEY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Submitted February 25, 1908. Decided March 16, 1908.

Reparation asked on account of alleged unreasonable freight rates charged on shipments of cross-ties moving between April 25 and August 12, 1907, from Barnett to McAlester, Ind. T. Subsequent to the movement of these shipments and the filing of the petition herein this territory was admitted as a state into the Union and the points of origin and destination are now located in the state of Oklahoma. By the act of Congress admitting Oklahoma to statehood the intraterritorial jurisdiction of the Commission ceased to apply to territory now embraced in that state. The Commission can make no lawful order in any case of which it has no jurisdiction under the provisions of the act to regulate commerce. Complaint dismissed for want of jurisdiction.

L. W. Hagerman for complainant.

M. L. Bell for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The provisions of the amended act to regulate commerce which became effective August 28, 1906, apply to common carriers, as defined in section 1, engaged in transportation "from one place in a territory to another place in the same territory."

The shipments of cross-ties, upon which unreasonable freight rates are alleged to have been exacted and for which reparation is asked in this petition, moved between April 25 and August 12, 1907, from Barnett to McAlester, both located in what was then known as Indian Territory.

The proclamation of the President formally announcing the admission of Oklahoma as a state into the Union was issued November 16, 1907. Therefore both Barnett and McAlester are now located in the state of Oklahoma.

While it is clear that this cause of action arose at a time when the Commission had jurisdiction in the premises, it is equally clear that it has no jurisdiction in respect to transportation wholly within a single state. We are therefore confronted with the necessity of determining the question as to whether or not the Commission has been ousted of jurisdiction by the change of status from territory to state. The fundamental question is whether or not the subject-matter of this controversy, within the jurisdiction of the Commission at the time the shipments moved, is still within its jurisdiction. And in determining this question the Commission is bound to accord proper consideration to the principles of law as enunciated by the courts.

Two separate but closely related questions were presented in this complaint, first, that of the reasonableness of the published rate applied to the shipments involved; second, that of reparation for the alleged damage resulting from the application of this rate, if found to have been unreasonable. Manifestly, neither the Commission nor the courts can award reparation on account of the exaction of duly established rates until they have been found to be unreasonable. Thus, the power to award reparation is necessarily dependent upon or coupled with the power to condemn the rate so charged. Beyond question, the Commission does not now have jurisdiction or authority to try the question of the reasonableness of the rate involved in this complaint with a view to fixing the just and reasonable rate between the points in question, because such rate applies to transportation wholly within the state of Oklahoma. We find no authority in the law for holding that the powers of the Commission with respect to questions arising in Oklahoma and Indian territories before their formation into the state of Oklahoma have, on account of that fact, been terminated as to one of the questions presented in this complaint and left in full vigor and force as to the other.

If the subject-matter itself is not still within our jurisdiction, the fact that the complaint was filed and served prior to the transformation from territory to state is wholly immaterial. The acquirement of jurisdiction of the parties by the filing and service of the complaint in no way helps us to retain the case if the law under which the jurisdiction over the subject-matter must be exercised has ceased to operate. If we have jurisdiction now to award reparation in this case, it would seem that we would also have jurisdiction in all similar cases now or hereafter brought upon causes of action which accrued in the territories from which the state was formed and which are not barred. Such a conclusion would create a situation in Oklahoma whereunder the Commission could be acting upon one standard of rates as a basis for reparation on past shipments without power to alter the rates, whereas the state authority, which alone

has power to alter such rates, might be acting upon an entirely different basis for that purpose—a condition incompatible with the principles and purposes of the Interstate Commerce Act which is intended to secure uniformity of rates and equality of treatment to all shippers. Upon this point the language of the Supreme Court in the case of *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 442, is pertinent:

When the Commission is called upon on the complaint of an individual to consider the reasonableness of an established rate, its power is invoked not merely to authorize a departure from such rate in favor of the complaint alone, but to exert the authority conferred upon it by the act, if the complaint is found to be just, to compel the establishment of a new schedule of rates applicable to all. And like reasoning would be applicable to the granting of reparation to an individual after the establishment of a new schedule because of a wrong endured during the period when the unreasonable schedule was enforced by the carrier and before its change and the establishment of a new one. In other words, the difference between the two is that which on the one hand would arise from destroying the uniformity of rates which it was the object of the statute to secure and on the other from enforcing that equality which the statute commands.

The Commission has no authority other than that derived from the act to regulate commerce, and when, pursuant to the enabling act, the proclamation was issued admitting Oklahoma as a state the intraterritorial provision of the act expired so far as it related to Oklahoma and left no power in the Commission to act under it. The Commission is therefore entirely without jurisdiction in the premises. We cite below some of the decisions which bear upon the question here involved:

McNulty v. Batty et al., 10 Howard, 72; *Ex Parte McCardle*, 7 Wall., 514; *Norris v. Crocker*, 13 How., 429; *Koenigsberger v. Richmond Silver Mine Company*, 158 U. S., 48; *U. S. v. Boisdoré's Heirs*, 8 How., 121; *Yeaton v. U. S.*, 5 Cranch, 281; *South Carolina v. Gillard*, 101 U. S., 437; *Railroad Company v. Grant*, 98 U. S., 398; *Freeborn v. Smith*, 2 Wall., 173; *Insurance Co. v. Ritchie*, 5 Wall., 541; *Moore v. U. S.*, 85 Fed. Rep., 465.

The act to regulate commerce creates a special administrative tribunal clothed with power to hear and determine causes of action involving a right which has long existed at common law, viz, the right to recover for an unreasonable transportation charge. The act did not abrogate this common-law right, and by the express language of section 22 the remedies already existing for its enforcement are saved. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, *supra*, and *Interstate Commerce Commission v. Railway Company*, 167 U. S., 501.

Where a special remedy is lost by a subsequent act ousting the jurisdiction of the tribunal charged with the administration of that remedy, this does not affect the right, the claimant being left to

pursue his common-law remedy. The specific remedy given by the act to regulate commerce was cumulative. The Commission has no authority to prescribe rates between points in the state of Oklahoma, and since the shipper can not now "primarily invoke redress through the Interstate Commerce Commission" in order to try the reasonableness of the rate on account of the exaction of which his claim for reparation is predicated, it can not be said that the assertion of his right of recovery in the state courts would be inconsistent with or repugnant to the provisions of the act to regulate commerce. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, *supra*.

The enabling act under which Oklahoma was admitted did not undertake to save causes pending before the Commission, if, indeed, Congress had power to do so. Authority to administer remedies incidental to the enforcement of common-law rights arising within the limits of a state at a time when the territorial status obtained must therefore devolve upon the state courts.

It is incumbent upon the Commission to satisfy itself upon the question as to its jurisdiction before undertaking to pass upon the merits of this case. Even were it not bound to do so under the technical rules of law, we would feel loath to make an order which, though not enforceable in the courts, might lull the claimant into fancied security, so that he would not avail himself of some other remedy now open to him, and thus stay the operation of the statute of limitations against his claim.

Whatever may be the merits of this claim, the Commission can not with propriety express any opinion in respect thereof, since it is without authority to make an order in the premises.

Upon full consideration we are constrained to dismiss this complaint for want of jurisdiction in the Commission to make a lawful order herein.

HARLAN, *Commissioner*, dissenting:

Without enumerating in detail the various powers vested in the Commission under the act to regulate commerce as amended, it will suffice for present purposes to say that it confers upon it authority (1) to reduce a rate that is excessive by requiring a carrier to fix a lower rate, and (2) to award damages or reparation on account of an excessive rate collected on particular shipments. These remedies among others the act makes available for the relief of shippers upon complaint filed and after full hearing. But they are essentially separate remedies for the redress of separate wrongs. Orders entered by the Commission in such complaints are judicially enforceable by different procedures, the latter in an action at law and only by the complainant in whose favor an award has been made by the

Commission, and the former in a suit in equity either by the Commission itself or by any shipper who desires on his future shipments to use the reduced rate so ordered by the Commission. The two remedies were established under different acts of Congress, the right of the Commission to order a carrier to put in a lower rate in place of a rate found by it to be excessive having been conferred for the first time in the amendatory act of June 29, 1906. It is not uncommon for the Commission to enforce one remedy without enforcing the other. It has had occasion not infrequently to reduce a rate that has been challenged by a shipper as excessive without awarding reparation on shipments previously made by him under that rate. On the other hand, while it would be unusual to award reparation on past shipments without reducing the rate so attacked as to future shipments, the power of the Commission to do so, under circumstances that require such action, is not to be doubted. Between the date when particular shipments were made and the date of the hearing of a complaint demanding reparation on those shipments many conditions might intervene to add to the carrier's expense of conducting the traffic, and thus justify on future shipments the application of the rate complained of, although the conditions existing when the previous shipments were made might require the Commission to hold that the rate at that time was unreasonable and therefore unlawful, and on that ground to award damages. In other words the power of the Commission to disturb an existing rate by requiring a lower rate to be established is a remedy against excessive charges for the future, while its power to award damages involves the reimbursement of a shipper for excessive charges actually collected from him on shipments in the past.

In this proceeding both remedies are invoked by the complainant. He complains of the existing published rate as excessive and prays that it be reduced with respect to his future shipments; and he asks for damages on account of the application of that excessive rate on his past shipments. Under the opinion of the majority the Commission declines to retain jurisdiction of the complaint or to enforce either remedy. And the ground assigned for this course is that since the shipments in question moved, and since the complaint was filed with the Commission, the territory of Oklahoma, under the authority of an enabling act passed by the Congress, has become the state of Oklahoma. The theory of the majority is that upon the happening of that event the territorial jurisdiction of the Commission ceased so far as it related to Oklahoma, and left no power in the Commission either to reduce the rate complained of as to future shipments or to award reparation on account of the application of the alleged excessive rate to shipments made by the complainant while Oklahoma was still a territory.

It is of course conceded that upon a complaint filed by a shipper for the purpose of availing himself of the first of these two remedies, that is to say, to secure with respect to his future shipments a reduction in the published rate between two points in the territory of Oklahoma, the power to afford him that relief was lost the moment that territory became the state of Oklahoma. But this loss of power resulted not, as intimated in the opinion of the majority, because the "intraterritorial provision of the act expired so far as it related to Oklahoma," nor because the enabling act "did not undertake to save causes pending before the Commission, if, indeed, Congress had power to do so," nor because of the silence of the enabling act with respect to such causes; but because the act to regulate commerce, as amended, which gives the Commission power to control rates between two points in the same territory, withholds that power as to rates between two points in the same state. By its terms the act does not extend to state traffic. But the jurisdiction of the Commission has not "expired" with respect to shipments made while Oklahoma was a territory. The status of Oklahoma at the time a shipment moved determines whether it was a territorial or a state shipment and whether the movement was subject to the Federal law or to the state law. The transformation of Oklahoma from a territory to a state can not transform the character of a shipment and change it from a territorial to a state shipment. And therefore the only question before us in this controversy is whether the shipments of this complainant moved from "one place in a territory to another place in the same territory." The opinion of the majority emphasizes the fact that the complainant's shipments were made between two points in Oklahoma. The fact that requires emphasis is that they were made between two points in the same territory. That being the fact, nothing has occurred that requires us or permits us now to deal with the shipments as if they had been made between two points in the same state. It is said in the majority opinion, *ante*, p. 367, that "while it is clear that this cause of action arose at a time when the Commission had jurisdiction in the premises, it is equally clear that it has no jurisdiction in respect to transportation wholly within a single state." Whether or not the Commission has jurisdiction in respect to transportation wholly within a single state is a proposition that is entirely irrelevant in determining whether we have jurisdiction in respect to transportation within a territory. Although the two points between which such shipments were made are now in the same state, that fact can not be said to alter and change the territorial character of the shipments when made.

And does it follow, because we now have no authority to fix, as the complainant prays, a reasonable rate to apply to his shipments in the

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future between two points in what is now the state of Oklahoma, that we have no authority to act upon his demand for damages with respect to shipments made by him in the past between two points in the territory of Oklahoma? If it be agreed, as it must be, that these are distinct and separate remedies and that the enforcement of the one does not necessarily involve the enforcement of the other, it is difficult to see upon what theory we may not now redress the wrongs complained of with respect to past shipments between points in the territory of Oklahoma. If the allegations of the complaint are well founded, and that is the impression an examination of the record makes upon me, then the defendant now has moneys unlawfully collected from the complainant and which, under the principles embodied in this legislation and in contemplation of law, it now holds for the use and benefit of the complainant. So far as past shipments are concerned the transactions between the parties are completed transactions. And if the facts are as alleged a definite right or cause of action has accrued upon them in favor of the complainant and against the defendant, which can be satisfied by the payment of a definite sum of money. A Federal law has been violated by the defendant, and the claim for damages arising out of that violation of law is a property right of the complainant. The adjustment of such rights is one of the objects for which the Commission was created. The right or demand is the subject-matter of a complaint regularly filed with the Commission, which was the only tribunal then having authority in law to take cognizance of it and to enforce the remedy invoked. The admission of Oklahoma into the Union has not in any way disturbed or modified such right of the complainant. It has in no respect changed the relation of the parties or altered the duty of the defendant to return the moneys unlawfully exacted by it from the complainant and therefore lawfully belonging to the complainant. The general scope of the powers of the Commission to do justice in such cases has in no wise been impaired by any subsequent legislation. It still has jurisdiction in the territories of the United States and not only may reduce rates alleged to be excessive but may award damages on account of the application of the alleged unlawful rate to past shipments. Its power to award damages in this case with respect to shipments made while Oklahoma was a territory seems to me as complete now as it was then, if not in all cases at least in cases pending before us when Oklahoma became a state. In doing so the Commission is not required to pass upon the reasonableness of a rate in force between two points in the state of Oklahoma; it is required only to pass upon the reasonableness of a rate that was in force in the territory of Oklahoma. And the exercise of that authority in this case involves no trespass upon the powers

of the courts of the state of Oklahoma, but simply the exercise of a power duly conferred by Congress upon the Commission.

It is true that this is probably not a case in which we would award damages on past shipments without reducing the rate as to future shipments, if the authority remained in the Commission to enforce both remedies, as prayed for in the complaint. If, as is alleged, the rate was unreasonable and therefore unlawful when the shipments moved it is probably an unreasonable rate at this time. And were Oklahoma still a territory the defendant would doubtless be required to take the rate out and substitute a reduced rate. But as it is now a state it is beyond the power of the Commission to grant that relief. Does it necessarily follow however that it is beyond our authority to redress the alleged wrongs of the complainant as to shipments made while Oklahoma was a territory? I can not see the matter in that light. The Congress has laid upon the Commission the duty of redressing both classes of wrongs when the facts developed on a hearing justly require such redress. Can we now evade this duty with respect to one of the alleged wrongs done to this complainant? No authority has been found among the adjudicated cases which lays down the principle that the loss by a court of the power to redress one kind of wrong necessarily withdraws from it the authority to redress a wrong of another character growing out of related transactions; or which holds that the loss by a court of the power to prevent wrongs in the future necessarily destroys its power to redress wrongs done in the past. Obviously the duty of a court in any case is to afford redress to the extent of its lawful authority. And that in my judgment should be the attitude of the Commission in the several Oklahoma cases pending before it. Being a special tribunal, the Commission under well established rules of law must take a narrow view of its jurisdiction and decline to entertain complaints of a character not clearly embraced within the terms of the statute by which its jurisdiction is defined; but when its authority is invoked, as in this case, in a matter clearly within the general scope of its powers a broad construction should be adopted in aid of the remedy and not a narrow construction that defeats the remedy. It should not be too ready to dismiss suitors in such cases, but when justified by the facts ought in all cases to afford them redress to the extent of its lawful authority. The only reason suggested in the majority opinion for not investigating the wrongs alleged to have been done to this complainant with respect to his past shipments is that an award by the Commission of damages on the past shipments, without the power to require a reduction in the alleged excessive rate as to future shipments, might result in an inequality and also in a lack of the uniformity that is contemplated in the law. The importance of that

view may easily be exaggerated and misunderstood. The confusion anticipated will not be avoided if the complainant be remitted to his action in the courts of the state of Oklahoma. For it is ordinarily no part of the duty or of the power of courts to fix rates for the future. And therefore should this complainant be awarded in the courts of Oklahoma the damages which he demands before the Commission, the whole matter will be left precisely in the condition in which it would be left should the Commission now award him damages without fixing a reduced rate for the future. Moreover if the Commission has the authority as here contended to afford the complainant redress with respect to his past shipments, such authority, under the principles announced by the Supreme Court of the United States in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, does not rest concurrently in the courts of Oklahoma. And I regard it as altogether probable that if he be now remitted to his action in the state courts he will there be advised that the Commission is the proper forum in which to seek redress, the alleged wrong having been done while Oklahoma was a territory and being in violation of a Federal law, the enforcement of the provisions of which is within the original cognizance of the Commission to the exclusion of all courts whether state or Federal.

The cases cited in the majority opinion have no bearing upon the question presented and considered in this case as I understand them. They either involve new statutes modifying the jurisdiction of the courts in which cases were pending and which were not saved to those courts by apt provisions in the law, or they involve statutes which abolish and discontinue a court without transferring pending cases to some other court. No such conditions exist here. The Commission is the tribunal of original jurisdiction in this case and no law has been enacted modifying the general scope of its powers. It still exists to determine complaints with respect to matters of interstate and territorial transportation; it may reduce alleged excessive rates on shipments in the future, and may award damages with respect to shipments made in the past under unlawful rates. None of the cases cited in the majority opinion involve such conditions. *McNulty v. Batty*, 10 How., 72, is a fair type of them all and has been much mentioned in this discussion. There a judgment of the supreme court of the territory of Wisconsin was pending on writ of error in the Supreme Court of the United States when Wisconsin became a state under an act that failed to transfer to the new state courts the cases then pending in its territorial courts. The entire judicial structure of the territory having been legislated out of existence all authority under it fell with the structure itself. The Supreme Court

of the United States was left in a position where, either upon the affirmance or reversal of the judgment of the supreme court of the territory, no court was left to which it could send down its mandate for further proceedings. In dismissing the case, the court (p. 78) called special attention to the fact that its appellate power rested upon the special statutes by which the territory had been created, all of which lost their force when it became a state, and did not depend upon the terms of the general judiciary act under which the Federal courts carry on their general functions. The reverse is the situation here. The jurisdiction of the Commission rests upon the general legislation by which it was created and its powers defined. It does not depend upon any special legislation relating to the territory of Oklahoma which has now lost its force, that territory having become a state. Its powers, therefore, remain unchanged and unimpaired. Their general scope is to be ascertained and determined from the terms of the act to regulate commerce as amended, and from that alone. And in my judgment, unless the Congress, in some enactment qualifying the terms of that act, has expressly modified our authority to afford redress to complainants, on whose shipments in the past between points in a territory an excessive and therefore an unlawful rate has been exacted, the Commission not only has the power to proceed to do justice in that behalf in this case, but is under the direct mandate of the law to do so. The fact that the power to take measures to protect the complainant against excessive rates in the future was lost when the territory became a state does not, in my judgment, leave the Commission with a discretion to decline to redress the alleged wrongs done the complainant on shipments that moved while Oklahoma was still a territory.

A line of cases more pertinent to the question here involved as I understand it are those that may be cited in support of the principle long established that when a court has once taken jurisdiction no subsequent change in the condition of the parties can oust it of jurisdiction. *Kanouse v. Martin*, 15 How., 198, 208; *Kirby v. American Soda Fountain Co.*, 194 U. S., 141; *United States v. Dawson*, 15 How., 467; *Morgan v. Morgan*, 2 Wheat., 290; *Koppel v. Heinrichs*, 1 Barb. (N. Y.), 450.

In *Culver v. Woodruff*, 5 Dillon, 392, which will sufficiently illustrate the general principle involved in all such cases, it appears that a county in which the plaintiff lived had been transferred, pending his action, to another Federal judicial district. The effect of the transfer, with respect to all actions thereafter commenced, was to deprive the original court of jurisdiction and to give jurisdiction to the Federal court to whose district the county had been attached.

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It did not, however, operate to take from the former court the jurisdiction that it had over the parties and the subject-matter in actions then pending. The court says, at page 393:

On the question raised by this motion, the court holds the law to be, that, when jurisdiction has once attached, no subsequent change in the relation or condition of the parties in the progress of the cause will deprive the court of jurisdiction over the cause, or over any proceeding touching the execution of the judgment. It is clear that the jurisdiction depends on the state of things existing at the time the action is brought, and that after it is once vested it can not be ousted by subsequent events.

It is further said at page 394:

The law in this case being silent as to cases pending in the district court for the western district of Arkansas against counties which have been placed by its terms in the eastern district, and against persons living in these counties, they must be tried in that court whose jurisdiction had attached at the time of the passage of the law.

Congress, of course, could have provided for a transfer of these cases. It has not done so. The mere passage of the law does not work a removal of the cases.

So far as concerns the complainant's demand for damages with respect to shipments made by him while Oklahoma was still a territory, the principle of law referred to in these cases seems to me conclusive. It can not be denied that whatever right to damages this complainant had with respect to his past shipments accrued and became a definite right while Oklahoma was still a territory; and he invoked the power of this Commission for the redress of the alleged wrongs done him by the defendant on those shipments. The Commission therefore had jurisdiction both of the subject-matter and the parties. And it ought clearly to retain jurisdiction, for the redress of such wrongs is still within the scope of its general powers.

The law is not an exact science, and the soundness of a conclusion reached upon a disputed legal proposition is rarely capable of demonstration. But in view of the substantial amount involved in this complaint and of the importance of the matter to the complainant and to others who have like demands pending before us, I have thought it well to explain at some length the reasons why I am compelled to dissent from the views expressed in the opinion of the majority.

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No. 1392.

T. H. BUNCH COMPANY AND MERCHANTS FREIGHT BUREAU OF LITTLE ROCK, ARK.,

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY;
CHICAGO, ROCK ISLAND & GULF RAILWAY COMPANY;
ST. LOUIS, WATKINS & GULF RAILWAY COMPANY; KANSAS CITY SOUTHERN RAILWAY COMPANY; LOUISIANA RAILWAY & NAVIGATION COMPANY; OKLAHOMA CENTRAL RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; TEXARKANA & FORT SMITH RAILWAY COMPANY, AND TEXAS & PACIFIC RAILWAY COMPANY.

Submitted February 27, 1908. Decided April 6, 1908.

The complaint having been satisfied by the restoration of the rate previously in force and the withdrawal of the rate complained of by tariff duly filed, is, on application of complainants, dismissed.

Morris M. Cohn for complainants.

S. W. Moore and *Fred H. Wood* for Kansas City Southern Railway Company.

James C. Jeffery and *Martin L. Clardy* for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complainants, by their attorney of record, Mr. Morris M. Cohn, make written application to the Commission to dismiss the complaint in this case, and inform the Commission that their complaint has been satisfied by the defendants by the reestablishment of the rate previously in force, and by withdrawing the rate complained of after filing tariffs as required by law, effective thirty days after said filing. No hearing was had and the records of the Commission show that such tariffs, by Supplement No. 12 to Chicago, Rock Island & Pacific Railway Company Tariff G. F. D. No. 19742-B, I. C. C. No. C-8068, were filed and concurred in by each and all of the defendants in this proceeding.

The complaint will be dismissed.

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No. 933.

IN THE MATTER OF DEMURRAGE CHARGES ON
PRIVATELY OWNED TANK CARS.

Decided April 13, 1908.

Private cars owned by shippers and hired to carriers upon a mileage basis are subject to demurrage when such cars stand upon the tracks of the carrier, either at point of origin or point of destination, but are not so subject when upon either the private track of the owner of the car or the private track of the consignee. The carrier must charge demurrage in all cases where such demurrage is imposed by tariff provision upon its own equipment, except when a privately owned car is upon a privately owned siding or track, and the carrier is paying, or is responsible for, no rental or other charge upon such car. A privately owned car, in the sense in which that expression is here used, is a car owned and used by an individual, firm, or corporation for the transportation of the commodities which they produce or in which they deal.

C. D. Chamberlain and *Joseph Hidy* for National Petroleum Association.

W. E. MacEwen for Peerless Tank Line.

F. B. Fretter for National Refining Company.

Hinsdill Parsons for General Electric Company.

F. A. Kistler for Central New York Car Service Association.

A. G. Thomason for Northeastern Pennsylvania Car Service Association.

A. L. Gardner for Baltimore & Washington Car Service Association.

T. B. Westgate for American Oil Works.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The questions here involved were at the hearing summarized as follows:

(1) Should a carrier subject to the act impose demurrage charges against a privately owned tank car during the time such car is standing upon a track which is also owned by the owner of such car?

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(2) Should such carrier impose demurrage charges against a privately owned tank car during the time such car is standing on a track owned by one other than the carrier and other than the owner of the car?

(3) Should such carrier impose demurrage charges against a privately owned tank car during the time such car is standing on a track owned by the carrier, but constructed for the special convenience of one industry rather than of the general public?

(4) Should such carrier impose demurrage charges against a privately owned tank car during the time when such car is standing on the public tracks of such carrier?

The tank cars in question are generally owned and used by shippers of crude and refined petroleum. It appears also that shippers of linseed and other oils, and also shippers of sirups and molasses, and possibly shippers of other liquids, have constructed and own such cars as are here considered.

It also appears that some railways own and operate their own tank cars as they do their other equipment, while other railways, in turn, furnish no tank cars whatever to shippers, but in their tariffs specify the terms on which privately owned cars and their contents will be carried. Further, certain lines of tank cars are owned and leased to shippers by private corporations organized for that purpose, which corporations have no part in the ownership or merchandising of the liquids carried in such cars, although they may be controlled by interests which are also engaged in merchandising such liquids.

For carrying the freight contained in such cars the railways charge their published rates. For the use of the cars the owners receive from the railways an allowance equal to three-fourths of 1 cent for each mile traveled by the car. No allowance beyond this mileage is paid to the owners of these cars for their use. The cars are returned to their owners without extra charge by the railways. The mileage allowance is paid on the return trip as well as on the journey to destination with load.

On the return journey the carriers have the right to load these cars. Except for the transportation of water in times of drought, however, comparatively little return loading is practicable. The cars that have once been loaded with crude petroleum would thereafter pollute refined petroleum or any other liquid. Cars intended for refined petroleum can not therefore be loaded with crude petroleum. Thus the necessities of the situation operate to confine these tank cars to the service of their owners for the carriage of freight in one direction only, despite the privilege of return loading held by the carriers.

It appears from the testimony that all the carriers are agreed that no demurrage should be charged for the time that a car may be held by the owner upon a side track owned by him, and also that all are agreed that demurrage should be charged when cars are held upon tracks owned by the railroad company. Beyond these two points agreement ceases and great confusion prevails. Some carriers concede to the owners of tank cars the right to themselves collect demurrage when the cars are held by consignees on their own tracks (or, what is equivalent, give the use of such cars to consignees as a business accommodation), while other carriers treat such cars when away from the home track of the owners as a part of their equipment and assess demurrage as they would if the cars had been borrowed from a connecting railroad.

An added confusion appears from the fact that some shippers of oil own many side tracks in many states, and are, in fact, both the shippers and the receivers of the oil carried in the cars in question, as well as the owners of the cars and of the tracks on which the cars are loaded and the tracks on which they are unloaded. As to such shippers the concession has been made that all tracks having the same ownership as the cars standing upon them shall be treated as the home tracks of such cars, no demurrage being charged in such cases. Thus some privately owned tank cars have only one home track and are required by the carriers to earn demurrage when standing on any other track, while other privately owned tank cars have hundreds of home tracks and rarely are required to earn any demurrage. To still further add to this confusion, the custom has grown up of looking beyond the immediate corporations owning the cars and the corporations owning tracks on which the cars are standing. If such corporations are controlled by the same interests, the carriers regard them as one and omit to impose demurrage charges.

It is the duty of carriers to furnish equipment. It is the policy of the law that the transportation business shall not be at all controlled or operated by those who are dealing in the commodities carried. Unless carriers do furnish equipment, shippers must. But if shippers must furnish equipment, discrimination is at once practically unavoidable. Not all shippers of any commodity can furnish their own cars. To require them to do so is practically to restrict the merchandising of the commodity to those able to supply for themselves the cars which it is the duty of the carrier to supply for all.

Why are practically all the tank cars for the carriage of oil owned by shippers of such oil? When asked this question, the shippers point to the published tariffs of the carriers in which is found the notice that no tank cars will be furnished. The carriers, on the other

hand, tell of the attempts to furnish such cars, and of the refusal of shippers to use other than their own cars.

Whatever the facts may have been which have led up to the present private ownership of tank cars, the fact remains that it is the duty of the carriers to furnish such cars, and that sound public policy demands that this duty should be performed in order that all shippers may be served equally well.

So long, however, as carriers hire cars from shippers, and the latter are under compulsion to furnish their own equipment by reason of the carriers' failure, we are not disposed to permit the carriers to treat this equipment as their own to the extent of imposing penalties for its non-use when it neither is on the tracks of the carrier nor paid for by the carrier when standing idle. Primarily demurrage is imposed by a railroad to compel prompt loading and unloading of cars. This is a proper regulation. The Commission fully recognizes the right of a carrier to secure the fullest practicable use of its equipment and to be recompensed for delays caused by the negligence and indifference of shippers and consignees. Such principle, however, does not carry with it by necessary implication the right to make a charge when no service is given. And upon what basis can it be justly said that a consignee, who owns his own sidetrack upon which rests a tank car furnished by his consignor, may be subjected to a per diem of \$2 for demurrage by a carrier which owns neither track nor car? What is the carrier giving, what service is it rendering for which it should be paid while such car is on the private track? If the carrier paid a daily rental for the car, whether moving or not, it would clearly have the right to exact a payment for unreasonable delay on the part of shipper or consignee; or if it furnished the track upon which the car stood it might likewise, and properly, make a charge for the use of the track. These tank cars are, however, not owned by the carrier, and their rental is paid on a purely mileage basis. We must, therefore, treat them as only to a limited degree a part of the carrier's equipment.

It is, therefore, our conclusion that private cars owned by shippers and hired to carriers upon a mileage basis are subject to demurrage when such cars stand upon the tracks of the carrier, either at point of origin or destination of shipment, but are not so subject when upon either the private track of the owner of the car or the private track of the consignee. The carrier must charge demurrage in all cases where such demurrage is imposed by tariff provision upon its own equipment, except when a privately owned car is upon a privately owned siding or track, and the carrier is paying, or is responsible for, no rental or other charge upon such car; and a privately owned car, in the sense in which that expression is here used, is a car owned and

used by an individual, firm or corporation for the transportation of the commodities which they produce or in which they deal.

In expressing this opinion the Commission is not to be regarded as bound thereby, either to the recognition of the right of a carrier to refuse to furnish proper and appropriate facilities for the shipment of oil or any other commodity, or of the right of a carrier to so contract with a shipper for the use of facilities as to permit any discrimination as between shippers or consignees.

13 I. C. C. Rep.

No. 1248.

GOFF-KIRBY COAL COMPANY

v.

BESSEMER & LAKE ERIE RAILROAD COMPANY.

No. 1249.

BUTTS CANNEL COAL COMPANY

v.

BESSEMER & LAKE ERIE RAILROAD COMPANY.

Submitted April 6, 1908. Decided April 14, 1908.

Where the defendant has in effect a rate upon bituminous coal it should apply that rate to the transportation of cannel coal.

Kline, Tolles & Goff for complainants.

G. E. Shaw for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

These two cases were heard together and present the same question, which is, What rate shall the defendant apply for the transportation of cannel coal?

Cannel coal is a variety of bituminous coal high in volatile matter, high in ash, low in fixed carbon. It is worthless for steam purposes and is little used for the production of heat. It was formerly sold largely to gas companies for the enriching of their product, but to-day oil has mainly supplanted it in the gas plant. In some instances it is used for general domestic purposes, but not to a considerable extent. It burns with a clear flame, is easily ignited, and clean to handle—qualities which adapt it especially for use in grates, to which it is

mainly confined. Many persons whose houses are heated and whose cooking is done with other fuel use cannel coal in their fireplaces.

The cost of mining this coal is considerably greater than with other varieties of bituminous coal. The complainants operate a cannel coal mine and a bituminous coal mine in close proximity. They pay the miner \$1 per ton for the cannel coal and 53 cents per ton for the bituminous coal. The price of the complainants' cannel coal at the mine is about \$2.75, while the bituminous coal sells for \$1.25. The higher grades of domestic coal sell for from \$2 to \$2.50 at the mine. The slack resulting in the mining of cannel coal sells for from 25 to 50 cents per ton only, since it has little value for steam purposes.

The specific gravity of cannel coal is about the same as that of ordinary bituminous coal, and it is susceptible of equally heavy loading. In actual practice the loading is generally somewhat lighter, for the reasons, first, that where shipment is made for considerable distances it is desirable to use the box car, which can be closed, thereby preventing theft of the coal; second, since this coal is used for a special purpose and in comparatively small quantities, it is often possible to sell a carload of 20 tons where a carload of 50 tons would not be taken.

Owing to the superior quality of this coal for use in grates, it can be sold in many localities at a considerably higher price per ton than other coals, and this gives to it a much wider distribution than attaches to ordinary soft coal. The complainants were asked to state the points to which they made shipment of this coal during the month of January, 1908, and have filed such a statement. This statement has been further amplified by the defendant in its brief from the records of the railway company. Assuming the detail given in the brief to be correct, we print below the carloads and stations to which the complainants made shipment during the above month:

Destination.	No. of cars.	Destination.	No. of cars.	Destination.	No. of cars.
Armour, S. Dak.	1	Erie, Pa.	1	Paw Paw, Mich.	1
Andover, Ohio	1	Eucld, Ohio	1	Port Richmond, N. Y.	1
Beverly, Mass.	1	Frewsburg, N. Y.	1	Portland, Me.	1
Proctor, Mass.	1	Greenville, Pa.	1	Painesville, Ohio.	1
Monroe, Mich.	1	Glencoe, N. Dak.	2	Toronto, Ontario	1
Meadville, Pa.	3	Girard, Pa.	1	Rolling Prairie, Ind.	1
Milwaukee, Wis.	1	Hamilton, Ontario	2	Salem, Mass.	1
Mankato, Minn.	1	Huntington, Ind.	1	South Sharon, Pa.	1
Butler, Ind.	1	Jefferson, Ohio	1	South Providence, R. I.	1
Butler, Pa.	2	Kingston, Ontario	1	Spring Valley, Minn.	1
Brantford, Ontario	1	Kalamazoo, Mich.	1	St. Paul, Minn.	1
Boston, Mass.	1	La Crosse, Wis.	1	Suspension Bridge, N. Y.	1
Benson, Minn.	1	Mystic Wharf, Mass.	1	Tracy, Minn.	1
Biddleford, Me.	1	Manistique, Mich.	3	Venango, Pa.	1
Browns Valley, Minn.	1	Mahoning, Ohio	1	Willoughby, Ohio	1
Cambridge Springs, Pa.	1	Natick, Mass.	1	Windham, Ohio	1
Cornwall, Ontario	1	New York, N. Y.	1	Washington, D. C.	1
Coldwater, Mich.	1	Newark, N. J.	1	Westfield, N. Y.	2
Collinwood, Ohio	1	North Cambridge, Mass.	1	Warren, Ohio	1
Cornlng, N. Y.	1	Niagara Falls, N. Y.	1		
Cleveland, Ohio	4	North Toronto, Ontario	1		
Dallas, S. Dak.	1	Osgood, Pa.	4		
Elmira, N. Y.	1	Ottawa, Ontario	2		
				Total	80

The above statement shows perfectly the character of the distribution of this commodity. It is plain that many of the elements which make the handling of soft coal extremely desirable, even at low rates, do not attach to the transportation of this cannel coal.

It is a general rule that anthracite coal takes a somewhat higher rate than bituminous coal. In many parts of the country bituminous coal itself is classified for the purpose of fixing freight charges. Lump coal takes a higher rate than slack, and a third intermediate class is often established. The defendant makes no distinction between different forms of bituminous coal, its charge for the transportation of slack being exactly the same as that for the transportation of lump. It has, in the past, in some instances, applied to this cannel coal its bituminous coal rate and in some instances has applied a higher rate. It has in many cases established a coal rate entirely for the purpose of moving this cannel coal; in other instances, it has sought to apply to cannel coal its sixth class rate. Its tariffs are in hopeless confusion, and it was stated by the general freight agent of the defendant, upon the hearing, that as a result of this investigation it desired to put those tariffs upon some consistent basis.

There is very much in this case to indicate that cannel coal might properly be distinguished from ordinary bituminous coal in determining the rates and conditions under which it shall be carried. The incidents of its carriage are different. It does not move in large quantities to particular places, but is widely distributed—a carload here and a carload there. The loading is less both for physical and for commercial reasons than would ordinarily obtain with bituminous coal. The service costs the carrier more and is of more value to the shipper. There is reason for the thought that a rate 75 per cent of the sixth class rate, applicable generally with a minimum of 45,000 pounds, would be in every respect a more logical and satisfactory rate from the carrier's standpoint and a better rate for the operator.

It was suggested upon the hearing that perhaps some such tariff ought to be established, but the complainants insisted that the result would be to shut up this mine. The defendant has not in the past distinguished between different forms of bituminous coal and has generally transported this cannel coal as bituminous coal. This mine has been in the main operated and developed under that system of rates. Cannel coal from other mines with which this coal comes into competition is, as a rule, transported upon the soft coal rate. There is nothing in the physical attributes of this coal to distinguish it from bituminous coal proper; indeed, it appeared that one mine upon the line of the defendant had been shipping cannel coal as bituminous without the knowledge of the defendant. We think, on the whole, that where the defendant has a rate applicable

to the transportation of bituminous coal it should apply that rate to the cannel coal of the complainants. We do not mean, however, that it is the duty of this defendant to establish rates upon the low basis of most bituminous coal rates, for the sole purpose of moving this commodity of the complainants. If the complainants desire to reach markets which the bituminous coal produced upon the defendant's line can not expect to reach, a higher charge may properly be imposed.

Cannel coal is classified as sixth class, while bituminous coal is not classified at all. To avoid confusion, therefore, the defendant should either eliminate cannel coal from the classification or should include it, in terms, in its tariffs covering the transportation of soft coal. If named in the coal tariffs of the defendant and left as now in the classification, the effect would be to apply the bituminous rate where one is in effect and to leave cannel coal to move under the sixth class rate where no specific soft coal rate is named.

The defendant has in the past, in some instances, charged more than the bituminous coal rate for the transportation of complainants' cannel coal, and the complainants ask as reparation the difference between the amount so paid and what would have been paid under the tariff applicable to bituminous coal. These complaints were filed August 28, 1907, and the defendant contends that with respect to all payments made prior to the passage of the amended act, June 29, 1906, these claims are outlawed. That act provides that complaints for the recovery of damages shall be filed with the Commission within two years from the time when the cause of action accrued, "*Provided*, That claims accrued prior to the passage of this act may be presented within one year."

The defendant's position is that the act was "passed" on June 29, 1906, and that therefore this petition, not having been filed within the year, can not relate back of June 29. If, however, by "passage" is to be intended the day on which the act took effect, then reckoning sixty days from June 29, the act took effect on August 28, and one year from the taking effect of the act would have expired at midnight, August 27. Hence, this petition, which was not filed until the following day, was not within the year. We have heretofore ruled that the filing of a petition on the 28th day of August, 1907, was within the proviso that claims accruing prior to the passage of the act might be presented within one year, and to that ruling we adhere.

All questions of reparation are reserved. It does not follow that because a rate is reduced for the future, damages will be allowed in all cases where that rate has been exceeded in the past. The parties stated upon the hearing that they could probably agree upon the

amount of reparation when the Commission had determined the rate. Assuming that these charges were collected in accordance with the published tariff, no part of them could be refunded by the defendant to the complainants without an order of this Commission. If, therefore, the parties agree upon the amount, they should indicate to the Commission in detail the adjustment which they have reached. If this seems to be in accordance with our decision, an order will be made accordingly. If the parties do not agree, the matter will be referred to an examiner to state the facts, upon which the Commission will dispose of the matter.

13 I. C. C. Rep.

No. 1315.

**JOHNSTON & LARIMER DRY GOODS COMPANY AND
COX-BLODGETT DRY GOODS COMPANY.***v.*

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY;
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-
PANY; DENVER, ENID & GULF RAILROAD COMPANY;
FORT SMITH & WESTERN RAILROAD COMPANY; GULF,
COLORADO & SANTA FE RAILWAY COMPANY; KAN-
SAS CITY, MEXICO & ORIENT RAILWAY COMPANY;
KANSAS CITY SOUTHERN RAILWAY COMPANY; MID-
LAND VALLEY RAILROAD COMPANY; MISSOURI, KAN-
SAS & TEXAS RAILWAY COMPANY; MISSOURI, KAN-
SAS & TEXAS RAILWAY COMPANY OF TEXAS; MIS-
SOURI, OKLAHOMA & GULF RAILWAY COMPANY;
MISSOURI PACIFIC RAILWAY COMPANY; ST. LOUIS,
IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
AND LEASED, OPERATED, AND INDEPENDENT
LINES; OKLAHOMA CENTRAL RAILWAY COMPANY;
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY;
ST. LOUIS, EL RENO & WESTERN RAILWAY COMPANY;
ALABAMA GREAT SOUTHERN RAILROAD COMPANY;
ALABAMA & VICKSBURG RAILWAY COMPANY; ALGO-
MA CENTRAL STEAMSHIP COMPANY; ERIE & WEST-
ERN TRANSPORTATION COMPANY; ANN ARBOR RAIL-
ROAD COMPANY; ASHLEY & DUSTINS' STEAMER
LINE; ATLANTA & WEST POINT RAILROAD COMPANY;
ATLANTIC COAST LINE RAILROAD COMPANY; BALTI-
MORE & OHIO RAILROAD COMPANY; BALTIMORE &
OHIO SOUTHWESTERN RAILROAD COMPANY; BALTI-
MORE STEAM PACKET COMPANY; BARRY TRANSPOR-
TATION COMPANY; BESSEMER & LAKE ERIE RAIL-
ROAD COMPANY; BOSTON & ALBANY RAILROAD
COMPANY; BOSTON & MAINE RAILROAD; BUFFALO,
ROCHESTER & PITTSBURG RAILWAY COMPANY;
CANADA ATLANTIC TRANSIT COMPANY; CANADIAN
PACIFIC RAILWAY COMPANY; CENTRAL OF GEORGIA

RAILWAY COMPANY; CENTRAL INDIANA RAILWAY COMPANY; CENTRAL VERMONT RAILWAY COMPANY; CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; CHESAPEAKE STEAMSHIP COMPANY; CHICAGO & ALTON RAILROAD COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO & CALUMET RIVER RAILROAD COMPANY; CHICAGO, CINCINNATI & LOUISVILLE RAILROAD COMPANY; CHICAGO & ERIE RAILROAD COMPANY; CHICAGO & GRAND TRUNK RAILWAY COMPANY; CHICAGO & ILLINOIS WESTERN RAILROAD COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY; CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; CHICAGO NORTHERN NAVIGATION COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS; CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; CHICAGO TERMINAL TRANSFER RAILROAD COMPANY; CINCINNATI & MUSKINGUM VALLEY RAILROAD COMPANY; CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, AND JUDSON HARMON, RECEIVER THEREOF; CINCINNATI, LEBANON & NORTHERN RAILWAY COMPANY; CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY; CINCINNATI NORTHERN RAILROAD COMPANY; CLEVELAND, AKRON & COLUMBUS RAILWAY COMPANY; CLEVELAND & BUFFALO TRANSIT COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; CLEVELAND, LORAIN & WHEELING RAILWAY COMPANY; CLYDE STEAMSHIP COMPANY; CROSBY TRANSPORTATION COMPANY; DELAWARE & HUDSON COMPANY; DELAWARE RIVER TRANSPORTATION COMPANY; DESERONTO NAVIGATION COMPANY, LIMITED; DETROIT & BUFFALO STEAMBOAT COMPANY; DETROIT & CLEVELAND NAVIGATION COMPANY; DETROIT, TOLEDO & Ironton RAILWAY COMPANY; DETROIT & TOLEDO SHORE LINE RAILROAD COMPANY; DIAMOND JO LINE STEAMERS; DUNKLEY-WILLIAMS COMPANY; ELGIN, JOLIET & EASTERN RAILWAY COMPANY; ERIE RAILROAD COM-

PANY; FLORIDA EAST COAST RAILWAY COMPANY; FORT WAYNE, CINCINNATI & LOUISVILLE RAILROAD COMPANY; GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY; GEORGIA RAILROAD COMPANY; GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY; GOODRICH TRANSIT COMPANY; GRAHAM & MORTON TRANSPORTATION COMPANY; GRAND TRUNK RAILWAY COMPANY; GULF & INTERSTATE RAILWAY COMPANY OF TEXAS; HOUSTON & TEXAS CENTRAL RAILROAD COMPANY; HOUSTON & SHREVEPORT RAILROAD COMPANY; HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY; HUNTSVILLE, LAKE OF BAYS & LAKE SIMCOE NAVIGATION COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; ILLINOIS TERMINAL RAILROAD COMPANY; INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY; INTERSTATE CAR TRANSFER COMPANY; IOWA CENTRAL RAILWAY COMPANY; INDIANA HARBOR BELT RAILROAD COMPANY; INDIANAPOLIS SOUTHERN RAILROAD COMPANY; KANSAS SOUTHWESTERN RAILWAY COMPANY; LAKE ERIE & WESTERN RAILROAD COMPANY; LAKE ONTARIO & BAY OF QUINTE STEAMBOAT COMPANY, LIMITED; LAKE MICHIGAN CAR FERRY TRANSPORTATION COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; LOUISIANA RAILWAY & NAVIGATION COMPANY; LOUISIANA WESTERN RAILROAD COMPANY; LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; MACON & BIRMINGHAM RAILWAY COMPANY; MACON, DUBLIN & SAVANNAH RAILROAD COMPANY; MAINE CENTRAL RAILROAD COMPANY; MALLORY STEAMSHIP COMPANY; MARIETTA, COLUMBUS & CLEVELAND RAILROAD COMPANY; MERCHANTS' & MINERS' TRANSPORTATION COMPANY; MICHIGAN CENTRAL RAILROAD COMPANY; MICHIGAN SALT TRANSPORTATION COMPANY; MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY; MOBILE & OHIO RAILROAD COMPANY; MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY; NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; NEW JERSEY & NEW YORK RAILROAD COMPANY; NEW ORLEANS & NORTHEASTERN RAILROAD COM-

PANY; NEW ORLEANS & NORTHWESTERN RAILROAD COMPANY; NEW ORLEANS TERMINAL COMPANY; NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY; NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY; NIAGARA NAVIGATION COMPANY, LIMITED; NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY; NORFOLK & SOUTHERN RAILWAY COMPANY; NORFOLK & WESTERN RAILWAY COMPANY; NORTHERN MICHIGAN TRANSPORTATION COMPANY; NORTHERN NAVIGATION COMPANY OF ONTARIO, LIMITED; NORTHERN PACIFIC RAILWAY COMPANY; NORTHERN OHIO RAILWAY COMPANY; OCEAN STEAMSHIP COMPANY OF SAVANNAH; OLD DOMINION STEAMSHIP COMPANY; OTTAWA RIVER NAVIGATION COMPANY; PENNSYLVANIA COMPANY; PENNSYLVANIA RAILROAD COMPANY; PERE MARQUETTE RAILROAD COMPANY, AND JUDSON HARMON RECEIVER THEREOF; PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; PITTSBURG, FORT WAYNE & CHICAGO RAILWAY COMPANY; PITTSBURG & LAKE ERIE RAILROAD COMPANY; QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY; RAHWAY VALLEY RAILROAD COMPANY; RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY; RIDEAU LAKES NAVIGATION COMPANY, LIMITED; SEABOARD AIR LINE RAILWAY; SOUTHERN PACIFIC COMPANY; SOUTHERN RAILWAY COMPANY; SOUTHERN RAILWAY COMPANY IN MISSISSIPPI; ST. LOUIS & HANNIBAL RAILWAY COMPANY; ST. LOUIS, KANSAS CITY & COLORADO RAILROAD COMPANY; ST. LOUIS MERCHANTS' BRIDGE TERMINAL RAILWAY COMPANY; ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS; TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS; TEXAS & PACIFIC RAILWAY COMPANY; TEXAS & NEW ORLEANS RAILROAD COMPANY; TOLEDO & OHIO CENTRAL RAILWAY COMPANY; KANAWHA &

MICHIGAN RAILWAY COMPANY; TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY; TRENT VALLEY NAVIGATION COMPANY, LIMITED; TRINITY & BRAZOS VALLEY RAILWAY COMPANY; TURBINE STEAMSHIP COMPANY, LIMITED; UNITED STATES & DOMINION TRANSPORTATION COMPANY; VANDALIA RAILROAD COMPANY; VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY; VIRGINIA & SOUTHWESTERN RAILWAY COMPANY; WABASH, CHESTER & WESTERN RAILROAD COMPANY; WABASH RAILROAD COMPANY; WABASH PITTSBURG TERMINAL RAILWAY COMPANY; WASHINGTON COUNTY RAILWAY COMPANY; WESTERN & ATLANTIC RAILROAD COMPANY; WESTERN MARYLAND RAILROAD COMPANY; WESTERN RAILWAY COMPANY OF ALABAMA; WHEELING & LAKE ERIE RAILROAD COMPANY; WHITE STAR LINE; WIGGINS FERRY COMPANY; WISCONSIN CENTRAL RAILWAY COMPANY; YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY; CENTRAL RAILROAD COMPANY OF NEW JERSEY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; LEHIGH VALLEY RAILROAD COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; PHILADELPHIA & READING RAILWAY COMPANY, AND WEST SHORE RAILROAD COMPANY.

Submitted April 1, 1908. Decided April 14, 1908.

1. Rates on cotton piece goods from Atlantic seaboard territory to Wichita, Kans., via Galveston, Tex., should not exceed \$1.25 per 100 pounds. This recognizes a differential of 32 cents against Wichita, which under normal conditions and upon the present basis of rates ought not to be exceeded.
2. The present rate upon knit goods from Atlantic seaboard territory to Wichita via Galveston of \$1.64½, producing a differential against Wichita of 26½ cents, is not unjust or unreasonable.

A. E. Helm for complainants.

Robert Dunlap and *J. L. Coleman* for Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company; Denver, Enid & Gulf Railway Company; Gulf & Interstate Railway Company, and Kansas Southwestern Railway Company.

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M. L. Clardy and *James C. Jeffery* for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company, and New Orleans & Northwestern Railway Company.

M. A. Stedman and *J. C. Jeffery* for International & Great Northern Railroad Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

S. A. Lynde for Terminal Bureau Association of St. Louis and Merchants' Bridge Terminal Railway Association.

A. R. Sheriff for Chicago & Calumet River Railroad Company.

G. F. Grattan for Railroad Commission of Kansas, Intervener.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The rates involved are those on knit goods and cotton piece goods from eastern producing points to Wichita, Kans., as compared with those of Kansas City, Mo. The question presented can only be understood by careful attention to the routes by which this traffic may move and the manner in which the rates applicable by these different routes are constructed. The routes are three, and for the purposes of statement it may be assumed that the point of origin in all cases is New York City.

The first is termed the all-rail route, from the fact that the movement is by rail over the entire distance. Rates by this route to Kansas City and points west in Kansas are combinations upon the Mississippi and Missouri rivers. The rate on cotton piece goods from New York to St. Louis is 65 cents, from St. Louis to Kansas City 35 cents, making a through rate of \$1. Ordinarily the rate to a Kansas point, like Wichita, would be formed by adding to this \$1 the local rate from Kansas City, which, in this case, is 66 cents. Inasmuch, however, as the short-line distance from St. Louis to Wichita is south of Kansas City, a rate of 96 cents is named on cotton piece goods from St. Louis to Wichita. This, if added to the 65 cents from New York to St. Louis, would produce a through rate to Wichita of \$1.61. In point of fact, this rate, for reasons not necessary to state, is still further reduced 5 cents, so that the actual all-rail rate from New York to Wichita is \$1.56.

The second route is the ocean-and-rail, so called because the transportation is first by ocean from New York to some southern port like Norfolk or Savannah and thence by rail to destination. From Norfolk or Baltimore the route would ordinarily be through St. Louis, while from a more southerly port it might move through some

southerly Mississippi River crossing. The Wichita rate is, however, determined by the combination upon St. Louis. The ocean-and-rail rate to St. Louis is 7 cents less than the all-rail, or 58 cents. To this is added 35 cents for the Kansas City rate, which is, therefore, 93 cents. Properly, 96 cents would be added to the St. Louis rate to form the through ocean-and-rail rate from New York to Wichita, which would thus be \$1.54. In fact, the rate on cotton piece goods by this route is \$1.36, and the reason for this is found in the third route.

This is ordinarily known as the "Gulf route," and involves a carriage by water to some Gulf port, ordinarily Galveston, from which the traffic is taken to destination by rail. The Gulf route was the last to be established, and formerly the rate to Wichita by that route was the same as that formed in the manner above indicated, via the ocean-and-rail route. The complainants and others similarly situated have earnestly contended in the past, however, that Wichita, by reason of its proximity to the Gulf, was entitled to a better rate than one formed in this manner, and for the purpose of recognizing this claim the rate of \$1.36 on cotton piece goods was established. This rate was not met by the all-rail lines, but was met by the ocean-and-rail carriers, as above.

Before proceeding further with this discussion we may inquire what the interest of these complainants is. They are wholesalers of dry goods and notions, located at Wichita. Their business is to bring cotton piece goods and knit goods from producing mills in the East to Wichita, and to reship these goods from Wichita to retailers at various points. In the prosecution of this business they are in competition with similar wholesalers located at Kansas City, who, in the same way, bring goods from the East to Kansas City and reship them to the same points. It is manifest that the cost at which the complainants can lay their goods down to the retailer depends upon the freight rate from the point of production to Wichita, plus the rate from Wichita, and that the cost to the Kansas City wholesaler involves the rate to Kansas City, plus the rate from Kansas City. Now, it costs the complainants \$1.36 per 100 pounds to bring these cotton piece goods from New England mills to Wichita, while it costs the Kansas City wholesaler but 93 cents per 100 pounds to transport the same commodity to Kansas City. Here, then, is a disadvantage of 43 cents per 100 pounds against the complainants in the bringing in of their goods, and it is obvious that they must rest under a greater or less disadvantage with respect to the total transportation charge at all points where the rate from Wichita is not less than the rate from Kansas City, by this same 43 cents.

Elaborate tables have been introduced by both parties for the purpose of showing the extent of this disadvantage. It is unnecessary to examine in detail this branch of the case. Suffice it to say that in only an extremely limited territory, extending not more than 25 miles to the east and north, and from 100 to 200 miles to the west and south, has Wichita the advantage of an equal chance in the freight rate; at all other points the advantage is with Kansas City and jobbers to the east.

The defendants also endeavor to minimize the effect of this discrimination, urging that the freight rate enters but slightly into the cost of these commodities, and that while this difference in freight may be a quantity capable of mathematical statement, it is practically negligible in the transaction of their business. We are convinced from this and many other cases that such is not the fact. The adjustment of freight rates largely determines where this business shall be conducted. In recent years the dry goods wholesaling business of Wichita has not kept pace with that upon the Missouri River. We can entertain no doubt but that the adjustment of freight rates is a most serious handicap to the prosecution of a wholesale business in a commodity like dry goods, which moves at the same rate in any quantity, at any of these interior Kansas towns. In what way, then, can this adjustment of rates be changed so that such towns will enjoy equal or more favorable rate facilities?

Lines operating through the Gulf establish by that route the same rates between New York and Kansas City as obtain by ocean and rail. Two of these lines, the Santa Fe and the Rock Island, run through Wichita on their way from Galveston to Kansas City, and transport, therefore, through Wichita, cotton piece goods from New York to Kansas City, the added distance from Wichita to Kansas City being 225 miles. It has been seen that the rate to Kansas City is 93 cents, while that to Wichita is \$1.36, and the first claim of the complainants is that these defendants violate the fourth section by charging less for the long than for the short haul, and that they should be ordered to maintain no higher rate at Wichita than at Kansas City.

This ground of complaint can not be sustained. The rate from New York to Kansas City is not made nor is it influenced by these Gulf lines. It is established by lines from the east and without reference to lines or competition from the west or south. It is not an abnormal rate. As already seen, it is formed by combination upon St. Louis. Rates from St. Louis to Kansas City are not extremely low; they are high rather than low. If any low rate is involved, it is that from New York to St. Louis, and this rate was in existence before there was a Gulf route. It is therefore in every

sense of the word true that these defendants in naming a rate of 93 cents on cotton piece goods from New York to Kansas City simply meet a rate which they find in effect and which they have not been instrumental in producing. They must make that rate or they must entirely withdraw from the business.

The Supreme Court of the United States has held, in cases too well known to require citation, that where a carrier is forced to establish a particular rate at the more distant point by competitive conditions which it does not control there arises out of this fact such a difference of circumstance and condition as exempts the carrier from the prohibition of the fourth section. It would be difficult to imagine a case which would more justly require the application of this holding of the Supreme Court than the one before us. We can not, therefore, direct the defendants to make no higher rate to Wichita than they apply at Kansas City.

Nor would the complainants in all probability derive any benefit from such an order if one were made. The testimony shows that comparatively little traffic moves from the Atlantic seaboard through the Gulf either to Wichita or to Kansas City. If these defendants operating through Wichita were required to make no higher rate to the Missouri River than to intermediate points, their only course would be to withdraw from the Missouri River business and thereby avoid breaking down their rates to points south of Wichita to which they do carry traffic. These rates can not be readjusted, therefore, upon the theory that they are in violation of the fourth or the third section.

It is equally manifest that the situation can not be remedied by any legitimate change in rates from the east to Kansas City and to Wichita. What the complainant desires is not a reduction of the rate to Wichita, but a reduction of the difference in rate between Kansas City and Wichita. If the rate from New York to St. Louis were to be reduced the complainants would be in no respect benefited, since that reduction would apply equally at Kansas City and at Wichita. This is also true of a reduction between St. Louis and Kansas City. Here, again, the price at which these two localities could own their cotton piece goods would be equally affected. A reduction from Kansas City to Wichita would not benefit the complainants, for while the complainants might obtain their goods cheaper, the Kansas City merchant would be able to distribute his goods upon a rate proportionately less than before. None of these reductions would change the relation between these two points.

This would be accomplished by making a through rate to Wichita less than the combination upon Kansas City. We have already seen that the all-rail rate from St. Louis to Wichita is 96 cents, as against

a combination of \$1, and we have further seen that the through ocean-and-rail rate from New York to Wichita is 14 cents less than the combined local rates. If we were prepared to disregard the Mississippi and Missouri rivers as basing lines, it is doubtful if we could properly establish a through rate lower than the sums of the locals by more than that already in effect.

All this is but another way of saying that the only relief for which the complainants can hope must come through a reduction of the rate via Galveston to Wichita. The only question which is fairly open in this case is upon the reasonableness of this rate. These complainants, if rates are to be established with reference to the east, are enjoying as favorable an adjustment as they can expect. Does their location, with respect to Galveston and the Gulf, entitle them to more favorable transportation charges from the northern Atlantic seaboard than those in effect upon the commodities in question?

The complainants contend that the rate via the Gulf to Wichita ought not to exceed that to Kansas City from the east, nor is this proposition so absurd as the defendants would make it appear.

It is true that the distance from New York to Wichita via Galveston is 3,000 miles, twice as great as that to Kansas City, but it must be remembered that of this 3,000 miles, 2,300 is water, and that transportation by water over long distances is not as expensive as by rail. It is 10,000 miles from New York City to San Francisco through the Straits of Magellan, but cotton piece goods have been habitually carried over this route for from 60 to 70 cents per 100 pounds. They are to-day being transported between the same points, via the Tehuantepec route, for the same figure, involving a water carriage of 2,275 miles, a transfer and rail haul of 186 miles, and a second transfer and water haul of 2,280 miles.

It is quite probable that the actual cost of transporting cotton piece goods from New York to Wichita via Galveston does not exceed that of carrying them from New York to Kansas City via the cheapest route. The all-rail haul is to the latter point 1,300 miles and over. The ocean-and-rail movement involves a rail carriage of from 1,100 to 1,300 miles, depending upon the route selected. If the goods move through some Gulf port there is a rail carriage of not less than 850 miles. If, therefore, the rate were to be measured by the expense of the service, it is probable that Wichita would to-day enjoy as low a rate as the Missouri River.

This rate of \$1.36 applies not only from New York, but from seaboard territory, which, broadly speaking, is that territory lying east of the Buffalo-Pittsburg line and north of the Potomac River. The goods move from the mill to New York upon the local rate, whatever that may be, and this rate is first paid or absorbed out of the

\$1.36. It was said that this local charge from the mill to the seaboard would average 15 cents per 100 pounds, and there is in addition a cartage charge from the depot to the dock which amounts to about 3 cents per 100 pounds more, making a total of 18 cents which must first be deducted from the through rate, and which leaves \$1.18 as the actual amount received by the line from New York to Wichita.

Out of this is taken 5 per cent, or 6 cents, to defray the cost of marine insurance, and the balance, \$1.12, is divided between the steamship and the railroad—35 per cent to the water and 65 per cent to the land. The rail carriers from Galveston to Wichita receive therefore 73 cents per 100 pounds for the transportation of these goods 700 miles.

Cotton piece goods are first class under the Western Classification, which obtains in territory west of the Mississippi River. The first class rate from Galveston to Wichita is \$1.37. The Texas commission first class rate from Galveston to Fort Worth, 350 miles, is 80 cents. The first class through rate from New York to Wichita is \$1.97½. It is apparent, therefore, that this rate of \$1.36 could hardly be pronounced unreasonable by comparison with the general level of rates prevailing in the territory through which it applies.

Rates to Wichita and similar points are generally determined by combination upon the Mississippi and Missouri rivers; that is, they are established from the east and are simply met by lines leading through Galveston. The complainants insist that this ought not to be so; that these southern Kansas towns, by reason of their proximity to the Gulf, are entitled to lower rates than those constructed from the east. It has already been suggested in this report that the actual cost of transportation from New York via Galveston to Wichita is not materially greater than to Kansas City, and while we are not prepared to hold that, for this reason, rates to Wichita should be reduced to a level with those of Kansas City via other routes, the fact is entitled to be weighed in disposing of this question.

There is also in this case an element of competition which must be dealt with. Wichita competes in the selling of these products with Kansas City and that fact must be, to an extent, considered in the establishment of these rates. Competition is universally considered by railways themselves in the rates which they voluntarily make, and it must, within certain limits, be taken into account by us. In *Johnston-Larimer Dry Goods Company v. Wabash Railroad Company et al.*, 12 I. C. C. Rep., 60, we declined to disturb a rate of 66 cents upon cotton piece goods from Kansas City to Wichita, although that rate, in every sense, is extremely high, since no particular individual or locality was injured; while in *Johnston-Larimer Dry Goods Company v. Atchison, Topeka & Santa Fe Railway Com-*

pany et al., 12 I. C. C. Rep., 55, we required the establishment of a rate of 50 cents from producing points in Texas to Wichita for a distance twice as great, upon the ground that Wichita and Kansas City were competitors in this business. So, in the present case, we feel that this competitive element is entitled to some consideration, and that especially in view of the less expensive route via the Gulf, the differential against Wichita should be less than the full local from Kansas City to Wichita.

Knit goods are first class in the Official, Southern, and Western Classifications. The ocean-and-rail rate from New York and seaboard territory to Kansas City is the regular first class rate of \$1.38. The rate to Wichita is \$1.64½. The local rate from Kansas City to Wichita is 66 cents. It will be seen that under the present adjustment the difference between Kansas City and Wichita against Wichita is only 26½ cents, almost 40 cents less than the full local. We feel that this is as favorable a rate upon this commodity as Wichita can expect in comparison with the rate to Kansas City.

In *Johnston-Larimer Dry Goods Co. v. New York & Texas Steamship Co. et al.*, 12 I. C. C., Rep. 58, we approved a rate on knit goods, from seaboard territory, of \$1.61½ to Wichita, as compared with \$1.31 to Topeka. This decision was based upon the existence of a lake-and-rail rate from Syracuse and other producing points to East St. Louis of 42 cents. This latter rate was not in effect during the season of 1907 and is not now in effect, so that the rates of the Santa Fe should be canceled or modified.

The Official Classification classifies cotton piece goods under Rule 25, second class, less 15 per cent. Under Southern Classification this commodity moves practically at the third and fourth class rates, but under the Western Classification it is first class. It should be noted, however, that while the first class rate from St. Louis to Kansas City is 60 cents, the rate upon cotton piece goods is but 35 cents, although that territory is within the limits of the Western Classification. The rate from New York to Kansas City is but 93 cents upon cotton piece goods, as against \$1.38 upon knit goods. From an operating standpoint cotton piece goods are in every sense much more desirable traffic than knit goods. We feel that the rate from Atlantic seaboard points should be distinctly lower than that upon knit goods, and that the differential against Wichita, as compared with Missouri River, ought not to be materially greater. In our opinion the present rate of \$1.36 via the Gulf lines is excessive, and we find that a rate of \$1.25 would be just and reasonable to apply for the future.

Our conclusion leaves the rates to Wichita upon knit goods as they are and makes but a slight reduction in the rate upon cotton piece goods. It is with some regret that we have felt obliged to deny the

prayer of the complainants for an equal rate with Kansas City, for it sanctions an apparent discrimination against Wichita; but the careful student of the situation must see that this springs not from the voluntary action of the carriers, but rather from the situation of Wichita itself. Whether these rates are constructed from the east or from the south, that city stands at about the apex. In course of time conditions may justify a reduction of these rates through the Gulf, but for the present we hold that upon the existing basis of rates and under normal conditions the differential upon these two commodities against Wichita may properly equal 27 and 32 cents per 100 pounds. We do not extend this holding to class rates nor to other commodities.

An order will be issued accordingly against those of the defendants which operate via Galveston.

13 I. C. C. Rep.

No. 1269.

GEORGIA ROUGH & CUT STONE COMPANY

v.

GEORGIA RAILROAD COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY, AND PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Submitted March 17, 1908. Decided April 13, 1908.

A low rate on stone paving blocks was made to permit shippers to compete with producers in other states, upon the condition, which was expressed in the tariff, that the minimum carload weight should be the marked capacity of the car. Complainant knew the weight of a cubic foot of paving blocks and always counted the number placed in a car; never specified capacity of car desired, although, upon request, could have had cars ranging from 40,000 to 100,000 pounds capacity; always had sufficient material to load to marked capacity of car received, which could have been easily loaded to and beyond that capacity; and from October 1, 1904, to November 30, 1907, found no difficulty in loading to marked capacity of the cars received. Upon this record and under the circumstances the regulation making the minimum carload weight the marked capacity of the car was not unjust nor unreasonable, and reparation based thereon is denied.

R. J. Southall for complainant.

R. Walton Moore and *Ed. Baxter* for Georgia Railroad Company and Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant corporation ships stone paving blocks from Lithonia, Ga., to Chicago, Ill., over the lines of the defendants.

During the time complained of the rate on said commodity between those points, via defendants' lines, was \$3.10 per ton of 2,000 pounds, the tariff covering which fixed the minimum weight of a carload at the marked capacity of the car. All cars loaded by complainant, before being transported, were weighed on the scales of the Georgia Railroad Company at Lithonia. If the actual weight of the load was less than the marked capacity of the car, the charges were based upon the marked capacity; if it exceeded the marked capacity, charges were collected on the actual weight.

13 I. C. C. Rep.

Complainant does not assail the reasonableness of the rate, but claims that the regulation fixing the minimum weight of carload at the marked capacity of the car unjustly discriminated against it on its shipments, and it asks reparation for the freight paid on the basis of marked capacity of the car when that was in excess of the actual weight of the shipment carried therein.

In 1897 the rate on paving blocks from Lithonia to Chicago over defendants' lines was \$3.82½ per ton of 2,000 pounds in carloads, minimum weight 40,000 pounds. This rate was subsequently reduced to \$3.23 per ton of 2,000 pounds with the understanding that cars would be loaded to their marked capacities, but that regulation did not appear in the tariff which reduced the rate. Later this rate was further reduced to \$3.10 per ton of 2,000 pounds in order to enable producers in the Lithonia and Stone Mountain sections to compete in Chicago with the quarries of Wisconsin and South Dakota, and the regulation was expressed in the tariff fixing such lower rate that the minimum weight of the carload would be the marked capacity of the car. The lines north of the Ohio River considered this rate entirely too low to retain the 40,000 pound minimum, and as a very material portion of the reduction was borne by the lines north of the Ohio River, they insisted upon the marked capacity minimum. At that time, as well as at present, the defendants were carrying paving blocks from Lithonia to Cincinnati at a rate of \$2.43 per ton subject to a 40,000-pound minimum, but that rate produced a greater revenue per ton per mile than the \$3.10 rate from Lithonia to Chicago. Effective November 30, 1907, defendants canceled this marked-capacity regulation, not because it was deemed unreasonable, but because they hoped thereby to satisfy the complainants, and published in lieu thereof a minimum weight of 40,000 pounds. Effective March 20, 1908, defendants canceled the rate of \$3.10 per ton and established in lieu thereof a rate of \$3.83 per ton of 2,000 pounds in carloads, minimum weight 40,000 pounds.

Although the marked-capacity regulation was maintained until November 30, 1907, reparation is claimed only on shipments moving between August 1 and October 1, 1904, and it would seem from this that after the dates mentioned complainant had no trouble in complying with the regulation complained of.

Complainant claims that prior to the moving of these shipments it was quoted a rate of \$3.10 per ton without reference to the minimum weight regulation, but by whom this quotation was made does not appear. After all shipments complained of had moved the same rate was quoted by a clerk in the office of the general freight agent of the Georgia Railroad in a letter in which he made no reference to the minimum weight of the loads. However, complainant made no

effort to examine the tariffs of the defendants, although one of the defendants' managing officers, and its only witness in this case, was in and out of the depot at Lithonia at numerous times each day.

The weight of a cubic foot of paving blocks, 165 to 170 pounds, was at all times well known to the complainant. It always knew the amount of paving blocks it had on hand when it ordered cars, and it always counted the paving blocks as they were put into the cars. When ordering cars, complainant made no demand for cars of any specific capacities, although defendants, during that period, had cars subject to demand whose capacities ranged from 40,000 to 100,000 pounds. Complainant admits that all cars received and loaded could easily have been loaded to their marked capacities. Based upon the weight per cubic foot of the paving blocks, each could have been loaded to about double its marked capacity.

Carriers establishing carload rates on commodities are permitted and sometimes required to establish different minimum carload weights for the numerous varieties, by reason of their nature, weight, and bulk. No general rule can be laid down that will fix a standard of measurement in all cases. The mandate of the law is that such regulation shall be reasonable and not unjustly discriminatory or unduly preferential. These restrictions are to be measured by the commodity to which they are applied. A minimum weight fairly applicable to one commodity might not be reasonable if applied to another commodity. The minimum weight regulation is for the purpose of insuring to the carrier a fair load for its cars and to advise the shipper of the amount he is required to load in order to get the carload rate and to escape paying the less-than-carload rate or the freight on weight not coming up to the minimum. Actual weighing of the article or articles making up a carload is the only way by which their total weight can be ascertained to a certainty, but this practice is not always convenient, practicable, or even advisable. Where a carload minimum is established for a given commodity, careful consideration should be given to the character of the commodity as well as the ease or difficulty attendant upon estimating the amount required to make up the minimum weight. Most shippers do not have their own scales or the means of ascertaining the actual weight put into a car, and of necessity are required to depend somewhat upon an estimate of the amount they load and whether it equals the minimum weight or exceeds the maximum. Where the commodity is not susceptible of a reasonably accurate estimated weight there should be sufficient margin between the minimum and the maximum weights to allow for reasonable variation between the estimated and the actual weights. Certain standard packages, such as barrels of flour, have an estimated weight based upon experience

of actual weights, and this is true of many commodities that are shipped in packages. Estimated weights of articles measured by the cubic foot or cubic yard can be made very close to the actual weights.

It is not to be understood from what we have here said that actual weighing is to be dispensed with in determining carload weights upon which freight is to be collected. There are, however, many instances in which an estimated weight, prescribed in carrier's tariffs, is entirely satisfactory to shippers and carriers, and is recognized as reasonable. See *White & Co. v. Baltimore & Ohio Southwestern R. R. Co. et al.*, 12 I. C. C. Rep., 306.

Based upon the facts in the record, the regulation complained of in the instant case imposed no unjust burden upon the complainant, and reparation predicated thereon is not warranted.

At the hearing the complainant originated the claim that on some shipments the defendants had exacted higher charges than those provided in their published tariffs, and that the total overcharge thereon amounted to \$80.84. Defendant, the Georgia Railroad, conceded that if the charges on any shipment exceeded the lawful published charges complainant was entitled to the return of such overcharge, and it was agreed that such defendant should take complainant's exhibits referring thereto, ascertain their correctness, and thereafter file statement showing the result of its checking and make the same a part of the record in this case. The general freight agent of the Georgia Railroad Company has filed a statement herein showing that the charges collected in excess of the lawful charges on the shipments set forth in the exhibits amount to \$65.81.

If the defendants have collected upon any shipment or shipments charges in excess of the lawful rate based upon the lawful minimum weight, it is clearly their duty to refund, at once, such overcharges, and no order of the Commission should be necessary therefor. An order will therefore be entered dismissing this case, but if complainant and defendants are unable to reach an agreement as to the correct amount of overcharges unlawfully collected from complainant, or if such overcharge is not promptly refunded by defendants, the facts may be brought to our attention and the case will, if necessary, be reopened for the entry of such order, or the inauguration of such proceedings as may be warranted.

No. 976.

MASURITE EXPLOSIVE COMPANY

v.

PITTSBURG & LAKE ERIE RAILROAD COMPANY; ERIE RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; NORFOLK & WESTERN RAILWAY COMPANY, AND CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Submitted April 7, 1908. Decided April 13, 1908.

1. Masurite, which is a high explosive but not dangerous to handle, should be accorded a lower rate than dynamite, the handling of which is attended with great danger.
2. Masurite classified as 1½ times first class in less than carloads and second class in carloads, minimum 20,000 pounds.

Chrystie & Brightman for complainant.

George E. Shaw for Pittsburg & Lake Erie Railroad Company.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company.

Kline, Tolles & Goff for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The petitioner asks that the rate on masurite be reduced. This commodity at the present time takes the same rate as dynamite and other high explosives of that kind, namely, double first class in less than carloads, and first class in carloads, with a minimum of 20,000 pounds. The reduction in rate is asked upon the ground that this substance, while a high explosive, is not dangerous to handle.

The base of masurite is nitrate of ammonia. It is manufactured by the Masurite Company, the complainant, by a secret process. It can be used as a substitute for dynamite, black powder, and other similar explosives, although at present its use is confined mainly to coal mines. It is exploded by means of a detonating cap embedded

in the material, and it was said that dynamite, aside from its dangerous character, was preferred to masurite for the reason that it could be more easily exploded.

Masurite sells for 8½ cents per pound f. o. b. factory. The price of dynamite seems to vary somewhat according to the brand, selling at the factory for from 9 to 14 cents per pound. Black powder is worth about 4½ cents per pound. The specific gravity of masurite was not given, but it is in no sense a bulky article. It is shipped in packages of 25 to 50 pounds.

Dynamite and all similar explosives have for their base nitroglycerin and are extremely hazardous to handle in any form. Dynamite may be exploded by concussion, and while a considerable blow is necessary to explode it in some forms, it may leak out of the package, as it always has a tendency to do, and spread itself out so thin that a very slight concussion will explode it, and the explosion of the smallest quantity would apparently let off a carload. It is also exploded by heat, about 340° Fahrenheit being required. The terrific force of the explosion and the consequent hazard to life and property are well understood. The transportation of all explosives of this kind is attended with extreme danger.

Explosives which are exploded by detonation are called quick burning or detonating explosives; those which are exploded by combustion, like powder, are termed slow-burning explosives. The transportation of slow-burning explosives, which seem to include powder in all its forms and of various kinds, is not as hazardous as that of dynamite, since they do not explode by concussion but only by combustion. They do, however, require very great care and involve great risk in the handling.

The complainant insists that masurite, while it is a high explosive, and while the consequences of an explosion if it occurred would be as serious as with dynamite, is perfectly safe to handle, and that its transportation carries with it none of the risks attending the carriage of dynamite and powder. For the purpose of demonstrating this to carriers as a foundation for securing a lower rate, Mr. Masury, the inventor of the compound and the president of the complainant company, instituted some time ago certain tests at which were present by invitation many railroad representatives, among them some of the most eminent authorities in the United States upon explosives and their transportation. These gentlemen witnessed the tests, suggested others in turn, and expressed themselves as satisfied when they were completed. These tests demonstrated that masurite could not be exploded by concussion and that it could be consumed by fire without exploding. So far as these tests showed, the handling of this substance is attended with no danger whatever.

Doctor Dudley, of the Pennsylvania, subsequently requested that a considerable quantity of it might be burned. He had seen a small quantity burned up without explosion, but he imagined that possibly a different result might follow the burning of a more considerable quantity; and to satisfy him upon this point Mr. Masury burned 500 pounds of masurite in his presence, without any explosion.

When this case was first assigned for trial in April, 1907, the defendants requested that the hearing might be continued for the purpose of permitting them to institute further tests into the hazard of handling this commodity. Such a continuance was granted and such tests were subsequently made under the direction of Major Dunn, the chief inspector of the Railway Bureau of Explosives, an organization of the principal railroads of this country for the purpose of investigating the nature of various explosives and devising suitable rules and regulations for their handling. These later experiments of Mr. Dunn fully corroborated the earlier experiments of Mr. Masury. Major Dunn was a witness and testified that masurite could not be exploded by ordinary concussion and that it could be burned up without explosion. He said that the only hazard he could suggest was detonation of some high explosive like dynamite in the immediate proximity of masurite. If a cartridge of masurite is laid against one of dynamite and the dynamite cartridge exploded, the masurite cartridge also explodes. If, however, the masurite cartridge is placed at a distance of one-half inch or greater it will not explode. Major Dunn was asked at what distance, in his opinion, a car of masurite could be from a car of dynamite which exploded, without consequent explosion of the masurite, and replied that no certain answer could, in the nature of things, be given, but that in his opinion there would be danger of an explosion if it were within 6 cars of the carload of dynamite.

The evidence in this case conclusively shows that masurite is as safe to handle as sugar or soap, except in the case stated by Major Dunn of a detonation of some similar explosive in very close proximity to the masurite.

Certain rules and regulations are observed in the transportation of all high explosives. A specially selected car is used and special care is taken to keep the car in proper order while in transit. This makes the carriage of these articles somewhat more expensive than that of ordinary freight of the same physical characteristics and justifies the imposition of a higher rate than would otherwise be imposed.

It was stated by the defendants' witnesses that the real reason for imposing the extremely high rate which these explosives bear is the risk of accident. A single explosion might cause in damage to

property and life, for which the railway would be responsible, more loss than would be received in a half century for the transportation of such explosives.

We feel that masurite ought to be treated and transported as a high explosive. While there can be no doubt that the handling of this commodity involves little risk, still there is always possibility of an explosion, the consequences of which would be so serious, not only to property but to human life, that every possible safeguard should be thrown around its transportation. This necessarily involves special care upon the part of the carriers, which means additional expense and which justifies a higher rate of itself.

We do not feel that this commodity ought, however, to take the same rate as dynamite. It was admitted by the defendants that the real reason for the extremely high rate imposed upon explosives is the hazard involved in the transportation and not the additional care which that transportation involves. Now, it would seem to be unjust to impose upon this article a rate embracing an element of hazard which does not in fact attach. This commodity sells in competition with dynamite. But for the element of greater safety in handling masurite, dynamite would be preferred. It would seem to be unjust to impose upon this commodity, whose transportation is attended with practically no risk, the same rate which is imposed upon another competing commodity, the carriage of which is attended with extreme risk. The valuable factor in this discovery or invention is freedom from hazard in handling, but that element of value is entirely disregarded in the adjustment of these rates.

It should also be noted that the only danger in the transportation of masurite arises from the proximity of dynamite in the same car or train. If there were no dynamite there would be absolutely no danger in the carriage of masurite. To the extent, therefore, that this explosive takes the place of nitroglycerin compounds the safety of transporting and handling high explosives increases. We are of the opinion that this commodity ought not to pay more than a second class rate in carloads, with minimum weight of 20,000 pounds, but that one and one-half times first class may properly be imposed in less than carloads. The same care must be exercised in transporting a small quantity as in carrying a whole carload, and for this reason it is extremely desirable that all these high explosives should be carried in full car lots. For this reason it is proper to make a much wider difference between the carload and the less-than-carload rate than obtains in the case of most commodities.

No. 1258.

WINTER'S METALLIC PAINT COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
UNION PACIFIC RAILROAD COMPANY, AND SOUTH-
ERN PACIFIC COMPANY.

Submitted March 28, 1908. Decided April 13, 1908.

A rate of 90 cents per 100 pounds, minimum 60,000 pounds, for the transportation of ground iron ore, from Chicago and Chicago points, to Pacific coast terminals, is excessive, and should not exceed 60 cents per 100 pounds.

A. L. Vogl for complainant.

H. T. Rogers for Atchison, Topeka & Santa Fe Railway Company.

J. A. Munroe and *F. C. Dillard* for Union Pacific Railroad Company and Southern Pacific Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The rate on ground iron ore from Chicago and Chicago points, including Iron Ridge, Wis., to Pacific coast terminals, was, at the time of the filing of this complaint, and still is, 90 cents per 100 pounds, with a minimum of 60,000 pounds. The complainant, who ships from Iron Ridge, asserts that this rate is excessive and ought not to exceed 60 cents per 100 pounds.

When the hearing was called the defendants appeared and stated that tariffs either had been or would be immediately filed putting in the rate of 60 cents demanded by the complainant, and thereupon the taking of testimony was suspended.

Upon the above admission of the defendants the Commission is of the opinion and finds that the present rate of 90 cents per 100

pounds is excessive and that the defendants ought not to charge for the future more than 60 cents per 100 pounds, with a minimum carload of 60,000 pounds.

None of the defendants to this proceeding reaches Iron Ridge, but we assume that their arrangements with their connections are such that they can establish the rate from that point, as well as from Chicago, which is reached by the defendant, Atchison, Topeka & Santa Fe.

An order will be issued requiring the defendants to establish the above rate of 60 cents from Chicago and Chicago points to Pacific coast terminals.

13 I. C. C. Rep.

No. 1212.

MISSOURI & KANSAS SHIPPERS' ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

No. 1224.

MISSOURI & KANSAS SHIPPERS' ASSOCIATION

v.

MISSOURI PACIFIC RAILWAY COMPANY.

No. 1225.

MISSOURI & KANSAS SHIPPERS' ASSOCIATION

v.

MISSOURI PACIFIC RAILWAY COMPANY.

No. 1226.

MISSOURI & KANSAS SHIPPERS' ASSOCIATION

v.

KANSAS CITY BELT RAILWAY COMPANY.

Submitted October 27, 1907. Decided April 6, 1908.

1. A complaint by a voluntary association demanding reparation under general averments which do not name the members on whose behalf it is filed and do not with reasonable particularity specify and describe the shipments as to which the complaint is made, does not operate to stop the running of the period of limitation provided in the law; and does not give the members of the association the opportunity subsequently to come in and take advantage of the complaint by proving up their shipments, which would be barred of relief upon separate and individual complaints if then filed by themselves.
 2. A statute of limitations is a wise method of forcing claimants either to assert their rights against others or definitely abandon them. Persons against whom claims may be made are fairly entitled to repose at some definite point of time, and this is especially true in connection with matters of transportation. Waybills and other papers accumulate in
- 13 I. C. C. Rep.

- vast numbers in the course of a few months, and carriers are entitled, if claims are to be made, to have them made with reasonable promptness.
3. The universal rule in the courts, also applicable to the Commission, seems to be that, under a system of pleading which permits a proceeding for damages to be instituted by the filing of a complaint, the statute of limitations does not cease to run against the demand until the complaint has been filed setting up the claim with sufficient particularity to make an issue. Until a definite cause of action has been pleaded there is nothing to arrest the running of the statute. All the elements fairly necessary to present the cause of action must be pleaded in a complaint filed with the Commission.
 4. Under section 13 of the act a carrier has a definite *locus penitentiae* in order to determine whether it will yield to the demand made or contest it; and the carrier has the right to have the complaint so stated as to afford it the necessary information to enable it to determine whether to request the authority of the Commission to satisfy the demand or to make a formal answer. When the demand is made on behalf of unnamed shippers and on shipments that are not specified with reasonable particularity, this opportunity is not open to the carrier.

C. W. Durbin and J. T. Burney for complainant.

Gardiner Lathrop, Robert Dunlap, James L. Coleman, and Thomas R. Morrow for Atchison, Topeka & Santa Fe Railway Company.

Martin L. Clardy and James C. Jeffery for Missouri Pacific Railway Company.

Thomas R. Morrow for Kansas City Belt Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On the suggestion of counsel for the respective parties these four complaints were heard together on one record. They were all filed by the same complainant, a voluntary association of merchants engaged in various commercial enterprises at Kansas City, Mo., and known as the Missouri & Kansas Shippers' Association. The complaints relate to switching charges collected from members of the association on carload shipments of various commodities, including hay, coal, grain, and wool, consigned to them at Kansas City from various interstate points of origin. In each case reparation is demanded either on the ground that the charges were unlawfully collected or on the ground that they were excessive in amount. The members of the association on whose behalf the demands are made are not named in the complaints. Nor do the complaints, either by date, weight, car number, point of origin, name of consignor or consignee, amount of freight collected, or otherwise, set up and describe the particular shipments on which reparation is claimed. The facts commonly understood to be essential to the statement of a cause of

action and necessary to enable the defendants to prepare their defense are wanting. Only in the most general way do the complaints advise the defendants of the extent and scope of the demands that they must prepare to meet.

The complaint in the first case was filed with the Commission on August 9, 1907. The other three complaints were filed on August 22, 1907. In the first case the reparation demanded is on all shipments made prior to August 28, 1906, regardless of their date; in the second case the demand covers all shipments made during the years 1902 to 1906, inclusive; the third case covers shipments moving during the years 1903, 1904, and until May 31, 1905; and in the last case reparation is asked on shipments that were made between September 22, 1902, and January 2, 1904. These dates become significant in view of the fact that under the amendatory act of June 29, 1906, there was incorporated in the act to regulate commerce a clause reading as follows:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after,
 * * * *Provided*, That claims accrued prior to the passage of this act may be presented within one year.

This as well as the other amendments then enacted became effective on August 28, 1906. It is clear, therefore, that if these complaints had been filed after instead of a few days before August 28, 1907, the special period of one year accorded to causes of action that accrued prior to August 28, 1906, would have expired, and whatever cause of action this voluntary association may be said to have had in this connection would have been barred by this limitation in the act, except as to the small number of shipments made by its members within the two preceding years. It is also clear that a separate and individual complaint filed on his own behalf by a member of the complainant association after August 28, 1907, would also have been too late, except as to shipments made by him within two years immediately preceding the date of the filing of such a complaint. In other words, all except a small part of the reparation demanded in the four cases would have been barred if complaints properly stating the demand had been filed after the date last mentioned.

This fact has not escaped the attention of the secretary of the complainant, who was the active force in effecting the permanent organization of this association and in promoting this litigation. Under its by-laws every merchant becoming a member of the association, besides being required to pay a membership fee of \$5 and annual dues of the same amount, is also required to sign "the necessary contract covering the collection of claims." This contract entitles the association to retain 50 cents out of every dollar collected by it for its mem-

bers; and of the 50 cents so retained by the association 40 cents go to the secretary as compensation for his labors. As the rates complained of in these proceedings were in force at Kansas City for a number of years, the reparation demanded must necessarily cover many carload shipments that were received there during that time; and in order to get them all in under these complaints the secretary prepared a circular letter which was mailed in October, 1907, to the members of the association, in which he explained that it was then too late, because of the limitation of the act, for the members to file their own individual complaints, and that the only relief open to them was to come in under the complaints filed by the association; he further explained that no one who was not a member of the association could get relief in any other way; and he therefore invited them to send their expense bills to him or to give him such other information as to their shipments as would enable him to file the claim with the Commission. He concluded the circular letter with a warning to the members not to delay the matter but to attend to it at once.

On the foregoing facts thus briefly outlined from the record the question that requires determination before the merits of these proceedings can be looked into is whether, as a matter of law, a complaint by a voluntary association demanding reparation under general averments which do not name the members on whose behalf it is filed and do not with reasonable particularity specify and describe the shipments as to which the complaint is made, may operate to stop the running of the period of limitation provided in the law, and thus give its members the opportunity subsequently to come in and take advantage of the complaint by proving up their shipments, although they would be barred of relief upon separate and individual complaints if then filed by themselves.

We have little hesitation in answering this question in the negative. In the general public interest it is necessary that a time be fixed, varying in length according to the nature of the transaction, within which persons aggrieved must either assert their rights against others or definitely abandon them. And a statute of limitations is generally regarded as a salutary and wise method of forcing claimants to pursue one course or the other. Persons against whom claims may be made are fairly entitled to repose at some definite point of time; they are entitled at some time to security from attack by those who may have grievances upon which to base actions for damages against them. This is especially true in connection with matters of transportation. Waybills and other papers relating to individual shipments accumulate in vast numbers in the course of a few months, and carriers are entitled, if claims are to be made, to have them made with reasonable promptness, so that the records and

the history of the shipments in question may readily be available for making their defense. It was doubtless on these general grounds that a period of two years was fixed by Congress, in the recent amendatory act, within which actions for reparation must be brought against interstate carriers.

In applying to complaints filed before it the limitation thus enacted into the act to regulate commerce, no reason is perceived why the Commission should not be guided by the general principles under which statutes of limitations are applied to actions brought in courts of justice. And the universal rule in the courts seems to be that, under a system of pleading which permits a proceeding for damages to be instituted by the filing of a complaint, the statute of limitations does not cease to run against the demand until a complaint has been filed setting up the claim with sufficient particularity to make an issue; in other words, until a definite cause of action has been pleaded there is nothing to arrest the running of the statute. There are, moreover, special reasons, under various sections of the amended act, for holding that none of these complaints, as drawn, can be said to set up a cause of action or to be sufficient to stop the running of the statute against the claims of the individual members of the complainant association. Conceding under the terms of section 13 that a voluntary association may attack an existing rate on behalf of its members, it may be said, on general grounds of convenience, that such an association may also ask for reparation on previous shipments made by them under the rate attacked. But it is clear that no demand for damages by such an association should be entertained, now that a period of limitation has been incorporated in the act, or can be said to state the complaint or cause of action so as to stop the running of the limitation, that does not definitely name the member or members on whose behalf the claim for reparation is made. It is under the authority of section 16 that the Commission is authorized to enter an order making an award of damages. That section gives to the Commission the power, after a full hearing upon a complaint made and when it shall have determined "that any party complainant is entitled to an award of damages," to make an order directing the carrier "to pay to the complainant" the sum awarded. In any such proceeding there must therefore be a party complainant who is entitled to damages, and the order must direct the carrier to pay the sum awarded "to the complainant." It is clear, then, that any complaint under which an award of damages is sought by a voluntary association of this kind, which can make no claim on its own behalf, must be filed on behalf of a definitely named party in interest. This thought is emphasized by the language of section 8 which provides that for an unlawful act or omission a carrier "shall

be liable to the person or persons injured;” and also by the language of section 9, which provides “that any person or persons claiming to be damaged * * * may either make complaint to the Commission * * * or bring suit * * * in any district or circuit court of the United States * * * but such person or persons shall not have the right to pursue both the said remedies.”

The distinction between a mere form of action and the essential nature of a cause of action must not be overlooked. The form of action is usually provided by statute; the cause of action ordinarily arises through some act or omission of the parties. And all the elements fairly necessary to present the cause of action must be pleaded in a complaint filed with the Commission. This is made especially clear by the language of section 13, which requires the Commission, when a complaint has been filed, to forward to the defendant “a statement of the charges thus made” and to call upon it “to satisfy the complaint or to answer the same in writing within a reasonable time.” And therefore unless the complaint brought by a voluntary association definitely names those of its members on whose behalf reparation is demanded, and describes the shipments on which reparation is claimed with sufficient particularity to enable the Commission to forward a statement of the charges to the defendant and to call upon it to satisfy the claim or answer the same in writing, it is clear that a cause of action has not been stated in the form and manner required by the law or in such manner as to stop the running of the period of limitation provided in section 16. The defendant, under section 13 of the act, has the right, upon receiving the statement of the charges made, to relieve itself “of liability to the complainant, for the particular violation of law thus complained of” by making “reparation for the injury alleged to be done.” This is a definite provision in the law and a definite *locus penitentiae* which the defendant has in order to determine whether it will yield to the demand made, under a proper order to be entered by the Commission, or contest it. The defendant therefore has the right to have the complaint so stated as to afford it the necessary information to enable it to determine whether to request the authority of the Commission to satisfy the demand or to make a formal answer. And when the demand is made on behalf of unnamed shippers and on shipments that are not specified with reasonable particularity, this opportunity is not open to the defendant. Under the general rules of pleading and more clearly under the special language of this act we therefore hold that no complaint by a voluntary association which fails to name the actual parties in interest on whose behalf reparation is demanded or which fails, in the petition itself or in some exhibit attached to it, to describe with reasonable particularity the shipments with respect to which damages are claimed, can be said

under the amended act to state a cause of action. And the filing of such a complaint can not stop the running of the period of limitation provided in the act, since no cause of action, formal or informal, is alleged.

There are many legitimate associations of shippers and they serve a useful purpose. By joining together merchants may act much more efficiently and effectively in relation to matters in which they have a common interest. Moreover, it will obviously save the time both of the Commission and of litigants to have claims, involving the same questions of law and the same states of fact and relating to the same rates, brought together and adjudicated in one proceeding. And the grouping together of such demands in one complaint instead of filing numerous separate complaints is to be encouraged rather than discouraged. But where the prayer of a complaint by a voluntary association asks for more than the mere fixing of a just and reasonable rate for the future, in substitution of a rate alleged to be unjust, and demands damages for its members on account of previous shipments made by them under the rates attacked, nothing short of the affirmative compliance on the record with the requirements here indicated will be accepted by the Commission as sufficient to take such claims out of the limitation provided by law.

The issue sought to be made in the first of the above entitled cases, even if well pleaded, would be controlled by the decision of the Commission in *Laning-Harris Coal & Grain Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 12 I. C. C. Rep., 479. It was there held that a published rate to a commercial center that does not affirmatively include delivery at industries on the terminals of other carriers entitles the consignee to a delivery only on the terminals of the line publishing the rate, and does not require that company to absorb the switching charges for delivering the shipment at points on the terminals of other lines. The complaint in the first of these cases is therefore without merit. The demand made for reparation in the third case is on shipments that moved prior to March 31, 1905, and in the last of the above entitled cases on shipments that moved prior to November 2, 1904. Those demands if now presented to the Commission by complaint in due form would clearly be barred by the limitation of the act. With respect to all but a small part of the claim made in the second case the limitation is also a bar. As to the remaining part of the claim in that case the complaint does not state a cause of action in such form as to enable the defendants to satisfy the demand, or the Commission to enter an order for reparation.

The four complaints must therefore be dismissed. And it will be so ordered.

No. 732.

CATTLE RAISERS' ASSOCIATION OF TEXAS

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY;
ATCHISON, TOPEKA & SANTA FE RAILWAY COM-
PANY; CHICAGO, ROCK ISLAND & PACIFIC RAIL-
WAY COMPANY; CHOCTAW, OKLAHOMA & GULF
RAILROAD COMPANY; HOUSTON & SHREVEPORT
RAILROAD COMPANY; KANSAS CITY SOUTHERN
RAILWAY COMPANY; MISSOURI PACIFIC RAILWAY
COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTH-
ERN RAILWAY COMPANY; ST. LOUIS SOUTHWEST-
ERN RAILWAY COMPANY; ST. LOUIS & SAN FRAN-
CISCO RAILROAD COMPANY; UNION PACIFIC RAIL-
ROAD COMPANY; CANE BELT RAILROAD COM-
PANY; CHICAGO, ROCK ISLAND & GULF RAILWAY
COMPANY; CHICAGO, ROCK ISLAND & MEXICO
RAILWAY COMPANY; CHICAGO, ROCK ISLAND &
TEXAS RAILWAY COMPANY; CHOCTAW, OKLA-
HOMA & TEXAS RAILROAD COMPANY; EASTERN
TEXAS RAILROAD COMPANY; EL PASO & NORTH-
EASTERN RAILWAY COMPANY; FORT WORTH &
DENVER CITY RAILWAY COMPANY; FORT WORTH &
RIO GRANDE RAILWAY COMPANY; GALVESTON,
HARRISBURG & SAN ANTONIO RAILWAY COMPANY;
GALVESTON, HOUSTON & HENDERSON RAILROAD
COMPANY; GALVESTON, HOUSTON & NORTHERN
RAILWAY COMPANY; GULF, BEAUMONT & GREAT
NORTHERN RAILWAY COMPANY; GULF, BEAUMONT
& KANSAS CITY RAILWAY COMPANY; GULF, COLO-
RADO & SANTA FE RAILWAY COMPANY; GULF &
INTERSTATE RAILWAY OF TEXAS; GULF, WEST-
ERN TEXAS & PACIFIC RAILWAY COMPANY; HOUS-
TON, EAST & WEST TEXAS RAILWAY COMPANY;
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY;
INTERNATIONAL & GREAT NORTHERN RAILROAD
COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY
COMPANY OF TEXAS; NEW YORK, TEXAS & MEXI-

CAN RAILWAY COMPANY; PARIS & GREAT NORTHERN RAILROAD COMPANY; PECOS VALLEY & NORTHEASTERN RAILWAY COMPANY; PECOS & NORTHERN TEXAS RAILWAY COMPANY; PECOS RIVER RAILROAD COMPANY; RED RIVER, TEXAS & SOUTHERN RAILWAY COMPANY; SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY; SAN ANTONIO & GULF RAILROAD COMPANY; ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS; TEXAS & NEW ORLEANS RAILROAD COMPANY; TEXAS & PACIFIC RAILWAY COMPANY; TEXAS CENTRAL RAILROAD COMPANY; TEXAS MEXICAN RAILWAY COMPANY; TEXAS MIDLAND RAILROAD COMPANY; COLORADO & SOUTHERN RAILWAY COMPANY; SOUTHERN KANSAS RAILWAY OF TEXAS; WEATHERFORD, MINERAL WELLS & NORTHWESTERN RAILWAY COMPANY; WICHITA VALLEY RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO & ALTON RAILWAY COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY, AND WABASH RAILROAD COMPANY.

Submitted June 28, 1907. Decided April 14, 1908.

1. The conclusions announced by the Commission in this case in its opinion of August 16, 1905, are affirmed, and the rates therein pronounced excessive are held to be still excessive and unreasonable.
2. The rates prescribed to Chicago are held to be sufficient to carry a delivery at the Union Stock Yards, and the imposition of any terminal charge in excess of one dollar is declared unreasonable.
3. Reparation will only be allowed from August 29, 1906, when the complainant presented its petition for further proceedings under the amended act.

Cowan, Burney & Goree for complainant.

Ed. Baxter for defendants.

James Hagerman and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

Spoonts, Thompson & Barwise for Fort Worth & Denver City Railway Company.

N. A. Stedman for International & Great Northern Railroad Company.

Robert Dunlap and *A. W. Houston* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Between February, 1899, and April, 1903, the defendants made marked advances in their rates upon live stock from breeding pastures of the southwest north of the quarantine line to northern ranges and from various maturing points west of the Missouri River to the principal markets of consumption. For the purpose of attacking these advances this petition was filed February 10, 1904. A very large amount of testimony was taken during the year 1904; the case was submitted, after elaborate argument, in the spring of 1905, and on August 16, 1905, the Commission filed its report, condemning, generally, the last advance, and holding that previous advances were justifiable. 11 I. C. C. Rep., 296.

Upon the promulgation of that opinion the complainant filed with the Commission an application for more specific findings as to the advances which were condemned, and this petition was under advisement by the Commission in June, 1906, when the last amendments to the act to regulate commerce were adopted. On August 29, 1907, after those amendments had become effective, the complainant filed with the Commission a request that it proceed to the making of an order in the premises under the authority conferred upon it by the amended act. The defendants denied the authority of the Commission to do this, insisting that the case must be disposed of under the provisions of the act in force when the testimony was taken and the original report filed.

The Commission held that no order could be made by it except as provided under the amended act, but that it was the right of both parties to be further heard before the making of such an order. The case was accordingly set down for further hearing, with notice to both parties that they would be allowed to introduce such additional testimony and to present such additional arguments as they might desire.

Acting under this permission, considerable testimony was introduced by both parties, and the case has been reargued. Generally speaking, the additional testimony is merely cumulative, although

both sides insist that there have been some changes in conditions since the former submission of the case which make in their favor.

When the former report was prepared the statute required the Commission to state the findings of fact upon which its conclusions were based, and this was done in the report of August 15, 1906, at considerable length. No question has been raised in these subsequent proceedings as to the correctness of the greater part of these findings, but counsel for the defendants did claim, upon argument, that in certain of them the Commission had fallen into error. We are no longer required to state our findings of fact, but it is our duty to carefully reexamine, in disposing of this case, the entire record, and it seems proper, in this connection, to refer briefly to the criticisms of the defendants upon our former findings.

The first of these, as stated in the brief of the defendant, is that the Commission compared the train loading of live stock with the train loading of trains which contain less than carload freight. This the defendant urges was wrong, for the reason that live stock is uniformly shipped in carloads and that therefore any comparison between that and other freight should be made with carload freight.

Witnesses for the defendants in great number had testified that the average cost of handling all other kinds of freight, including both carload and less than carload, was less than the cost of handling live stock. Mr. Peabody, whose calculations will be later referred to, had presented very elaborate figures in which he contrasted the cost of transporting live stock with the average cost of transporting all other kinds of freight, carload and less than carload.

For the purpose of estimating the force of this testimony the Commission instituted certain comparisons between the train loading and the train mileage of live stock and other freight. Manifestly, our comparisons to be of value and fair to the complainant must be upon the same basis with those made by the witnesses of the defendants; and since they had embraced both carload and less than carload freight it was incumbent upon us to do the same.

The testimony in this case apparently showed that the average tons of paying freight, in trains consisting either wholly or in part of live stock, was greater than the tons of paying freight in the average train upon most or all of the lines of the defendants.

It also appeared that the average rate per ton-mile received by most of these defendants for the handling of live stock was greater than the average rate for the handling of all traffic, and usually considerably greater. If the number of tons of paying freight in a live-stock train was greater than the number of tons in the average train, and if the rate per ton-mile applied to the movement of live stock was greater than the average rate applied to the movement of all traffic,

it seemed to us then, and it seems to us still, that this is persuasive evidence that the profitableness of handling live stock as actually handled by these defendants, notwithstanding the many disabilities under which that traffic rests, was above the profitableness arising from the handling of ail freight, on the average.

The defendants also claim that the Commission erred in its finding as to the regularity with which this traffic moves.

The carriers had alleged as one of the reasons why this live-stock business was undesirable that its movement was spasmodic and uncertain. The Commission refused to sustain this contention and found, upon the contrary, that live stock moved with great regularity, instancing as illustrative receipts at Chicago, both of the market as a whole and over individual lines. It is now said that Chicago is not a representative market, and a statement is presented showing the cars of live stock handled into Kansas City by the Atchison system during certain years.

Chicago was selected as being the largest live-stock market in the United States. An examination of the figures presented by the Santa Fe apparently indicates that its movement of live stock to Kansas City is not quite as uniform as the movement to Chicago over that line. Eliminating, however, that year when flood conditions at Kansas City practically interrupted all traffic for several weeks, the movement as shown by these statements is still remarkably uniform.

What the Commission said in its former report was that while this traffic moved at one season of the year from one locality and at another season from another locality, these different movements counterbalanced each other, so that as applied to the great systems, which are mainly affected by this proceeding, the movement as a whole was remarkably regular. With that finding we are entirely satisfied. It is doubtful whether the Santa Fe system handles any single commodity in large quantities with respect to which the time of its movement and the amount of the movement can be so accurately gauged as in case of live stock.

It is further claimed that our estimate of the relative amount of damages paid for injuries to live stock in transit, in proportion to the gross receipts derived from the business, is altogether too small. From the testimony of the traffic manager of the Atchison, Topeka & Santa Fe upon the former hearing, we found that this percentage of damages on account of live-stock shipments to earnings from such shipments was 1.23 per cent, and we expressed the opinion that this would not be far from the average in case of all the defendants under normal conditions. Various Texas lines now file statements showing a much larger percentage, and the Santa Fe itself shows that for the year 1906 the percentage in its case was 4.95.

According to the Santa Fe statement, produced upon the former trial, the gross sum paid by that system for such damages for the seven years from June 30, 1898, to June 30, 1904, was \$233,704.16, or \$33,386.16 per year. According to its statement produced upon the last hearing the amount paid during the year 1906 alone was \$132,525.46. This of itself shows that the figures given for the year 1906 do not represent normal conditions upon that system.

As indicated in our former report, the service rendered by certain of these lines in the southwest has been in recent years extremely poor, and for the last two years this has been even worse than before. Not only have these defendants utterly failed to discharge their duty as common carriers engaged in the shipment of live stock and thus subjected themselves to heavy claims for damages, but this failure upon their part has inflamed public opinion and perhaps led to the institution of more suits and the giving of larger verdicts than otherwise. It is certainly true that many of these Texas lines have actually paid damages much in excess of the percentage found by this Commission, but this seems to be due to local conditions for which the carriers themselves are mainly responsible and in respect of which they are legally at fault. As applied to the defendants as a whole, we still think that our former finding was sufficiently favorable.

In so far as this traffic is by nature hazardous, the rate for its movement may properly reflect that hazard; but in so far as these damages are due to gross shortage of duty upon the part of the defendants, they can not be allowed to revenge themselves upon the shipping public by a corresponding increase in their charges for transportation.

What is most dwelt upon by the defendants is the treatment accorded the testimony of Mr. Peabody, the statistician of the Atchison system. It was insisted upon the former argument, and is reiterated with great earnestness now, that the figures presented by this witness are a conclusive demonstration against the contention of the complainants. Several particulars are pointed out in which it is said that we either failed to apprehend the position of Mr. Peabody or have not fairly treated his testimony. In view of the earnest insistence by the defendants that the evidence of this witness must control the disposition of this case, it seems proper to refer to it somewhat more in detail than would otherwise be necessary.

What Mr. Peabody has attempted to do was fully stated in our former report, and may be briefly indicated here. He takes the operating divisions of the Santa Fe system, over which this traffic mostly moves, and determines the total amount of money expended in the maintenance and operation of each one of these divisions for a given year. He apportions the total amount between passenger and

freight and divides the amount applicable to freight by the total number of tons hauled over the division during the year, including the weight of the car, and determines in this manner the cost of hauling a gross ton.

He then starts with a carload of cattle, the average weight of which can be known with accuracy, and determines the cost of hauling this car over the various divisions by multiplying the number of gross tons by the gross ton cost upon each division, obtaining, in this way, what he styles the "operating cost" of moving this car from its point of origin to destination. To this he adds interest and taxes, distributed upon a car mileage basis, thus obtaining what he terms the "total cost of moving a carload of cattle." In arriving at this cost he assumes that about 90 per cent of stock cars are returned empty, and charges upon the same gross ton basis for this empty haul. He now inquires what revenue his company receives for the handling of this car. If this is more than the total cost he denominates the difference a profit, and if less a deficit.

Upon the former hearing Mr. Peabody introduced a table showing, upon the above basis, the results of transporting live stock from some twenty or thirty different points, mostly in the state of Texas, to Kansas City, Chicago, and St. Louis. These shipments sometimes showed a profit and sometimes a deficit, as above defined. He added together the profits and the deficits, subtracted the sum of the profits from the sum of the deficits, divided the remainder by the total number of points, and deduced the conclusion that there was a deficit, on the whole, of some \$5 per car.

Many of the points thus selected were not upon the line of his system, which received the traffic from its various connections at junction points. In determining the financial result to his company he had taken as the revenue not the rate from the junction point to destination, but the division of the through rate received by the Santa Fe System. For example, the rate from Fort Worth to Kansas City is 36½ cents per 100 pounds, while the division allowed the Santa Fe on business originating at some point beyond Fort Worth and received by that company at this junction would be perhaps 23 cents per 100 pounds. In determining whether the rate from point of origin was reasonable he considered not the total through rate, but the amount which his company received as its division.

The Commission was of the opinion that the contention before it was upon the reasonableness of the rate from the point of origin to destination, and not whether, under stress of competition, the Santa Fe obtained less than its fair share of this rate. It accordingly eliminated from Mr. Peabody's table of points of origin those points not upon the lines of the Santa Fe and proceeded to strike a balance

with the remaining points in exactly the same way that Mr. Peabody had struck his balance with the whole. The result then was not a deficit, but a profit of some \$14 per car. It is now insisted that this proceeding upon the part of the Commission was entirely unfair, and Mr. Peabody presents, as a part of his recent testimony, a table of stations entirely on his own line, which shows not a profit, but a deficit.

As previously pointed out by the Commission, the whole calculation is practically worthless, and the above statement clearly shows this. Mr. Peabody, by selecting the proper points, can show either a deficit or a profit, as he sees fit. The points which he originally selected showed a profit; those which he now selects a deficit. To be of any value whatever, his computations should take all points in the territory involved. We are still of the opinion, however, that the fundamental question before us is not whether this traffic is profitable to the Santa Fe system, which may handle it under disadvantageous circumstances, but whether the rates are reasonable.

Some time ago the Texas & Pacific Railway Company canceled all joint through rates upon live stock from points upon its line, and these rates were subsequently reestablished by an order of this Commission. It is now suggested that, inasmuch as the Santa Fe system is handling this traffic under compulsion of this order, its divisions of these through rates may properly be considered as they were by Mr. Peabody. In answer to this it should be noted that while the Commission has indeed established joint through rates in the application of which certain of these divisions are accepted by the Santa Fe system, it has never been asked to establish the divisions themselves, and has never expressed an opinion upon their reasonableness. The Santa Fe accepts its low division from Fort Worth, not under an order of this body, but because, for competitive reasons, it must do so.

In determining the cost of transporting a gross ton of freight over the various divisions of his system, Mr. Peabody must, of necessity, apportion certain expenses, like those of maintenance, in toto, and those of operation, in part, between passenger and freight service. The Commission pointed out in its former report that in the early history of this body it had required railways in making their statistical returns to undertake to make an apportionment of this sort, but had later abandoned that requirement at the request of the railways themselves, as not sufficiently reliable to be of much value. Mr. Peabody now undertakes to fortify his method of distributing these expenses by further testimony of his own and by the opinion of expert witnesses.

We did not decline to accept the conclusions of Mr. Peabody because he had found it necessary to make this distribution of expense

between freight and passenger service; that was simply pointed out as one of the incidental infirmities in his calculation. The testimony since introduced adds nothing upon that point. This body has just promulgated, under express statutory authority, a uniform system of accounts for use by the various railways of this country. We have not there required the separation of freight and passenger expenses. Such information would be of great value, but, in the opinion of our own statistician and of the accountants of most railways, it can not be furnished with sufficient accuracy to be of value as statistics. We repeat here what was said before, that such a distribution can have "only the reliability of an estimate."

The real objection to Mr. Peabody's conclusions arises not out of the accuracy of his figures, but from the fundamental errors in his method. What he does is to determine the average cost of handling a gross ton of freight over certain divisions of his system. In arriving at this result, he must, of necessity, consider the movement of all freight of all kinds. With the cost so reached he contrasts the movement of the traffic in question; that is to say, he compares the movement of a car of live stock from Pecos to Chicago, a distance of 1,350 miles, with the movement of all freight of all kinds upon the line between Pecos and Chicago. He charges, for example, against the movement of that carload of cattle the station expenses of all sorts at every station between those points.

It is well understood that the expense of handling short haul is much greater than that of long haul traffic. Mr. Peabody himself states that the average haul of a carload of live stock upon that system is 281 miles; yet he contrasts with these distances the movement of this carload 1,350 miles.

It is equally well understood that the cost of handling less than carload traffic is very much greater than that of carload business; indeed, it has been said in testimony before this Commission that it is six or seven times as much. About 7 per cent of all the traffic of the Santa Fe is less than carload. It may very likely cost as much to handle this 7 per cent of less than carload business as it does to handle one-fourth of the entire carload traffic, and yet Mr. Peabody charges this carload of live stock from Pecos with all the expense of the less than carload freight.

Mr. Peabody further assumes that this traffic from distant points, moving as it does largely in solid train loads, ought to bear a rate which pays the same profit as traffic which moves over short distances. This is not so. It is universally agreed that the rate per ton mile should decrease as the distance increases, not only for the reason that the cost of service decreases, but also because free communication between distant parts of this country can in no other way be had.

One of the principal sources of apprehension expressed by railroad witnesses before the committees of Congress, when the advisability of conferring upon this Commission the rate-making power was under advisement, was that we should be obliged to adjust rates upon a distance basis. It was earnestly said by railroad representatives that the interstate rates of this country could not be, and ought not to be, based on distance. But these defendants are insisting that distance is the proper measure of the reasonableness of a rate, since they insist that long-distance traffic should bear the same proportion of expense as short-distance traffic.

Again, Mr. Peabody of necessity assumes that all kinds of traffic ought to bear the same proportion of expense, since he compares the cost of handling this live-stock business with the cost of moving all freight transported by his system; but it is well understood that the profit paid by one commodity need not be, and ought not to be, the same as the profit paid by every other commodity. Undoubtedly, no commodity should be moved at a rate which is less than the cost of the movement; but it can not be said that the rate upon a particular article should yield, if above the cost of movement, any given proportion to the payment of dividends or interest. It will be noted that the amount yielded by these rates, even by the extremely low divisions accepted by the Santa Fe from its connections, in all cases exceeds, by a substantial amount, the cost of operation.

Nothing can be more conclusive against the value of Mr. Peabody's figures than the *reductio ad absurdum*, which results from an application of his method of calculation to a case which it is not intended to fit.

Within the year the rate of the Santa Fe company upon cotton piece goods from Kansas City, Mo., to Wichita, Kans., has been challenged by complaint filed with this Commission. That company contended in that proceeding that this rate was reasonable, and we declined to disturb it.

Mr. Peabody was asked to state what profit, according to his method of computation, his company would derive from the transportation of a carload of 60,000 pounds of cotton piece goods between those points, and has filed a statement showing that the entire cost, including taxes and interest, of operating this car would be \$23.43, while the revenue derived would be \$396. By profit as here used is meant that portion of the entire revenue which remains for the payment of dividends after every other expense has been satisfied.

It was stated by a witness thoroughly familiar with live-stock rates that the short-distance rates from points in Kansas to Kansas City were among the lowest to be found in this whole country. An application of Mr. Peabody's calculations to these rates for distances up

to 300 miles shows a profit of from 30 to 60 per cent. As already said, the average haul of a carload of live stock upon the Santa Fe is, according to Mr. Peabody, 281 miles. Perry, Okla., is situated 324 miles from Kansas City. The total cost of transporting a carload of cattle from Perry to Kansas City, including the return haul of the empty car and taxes and interest, would be, according to the figures of Mr. Peabody, \$34.83, the revenue \$67.80, leaving a net profit applicable to dividends of \$32.97, or something over 48 per cent.

The taxes and fixed charges upon this shipment are \$10.86 in all. When it is remembered that the bonded debt of the Atchison, Topeka & Santa Fe Railway is some \$28,000 per mile, while its capital stock is but \$22,000 per mile, it will be seen that this ratio of profit would yield an utterly unreasonable dividend.

We do not suggest that the interstate rates upon the Santa Fe system could be or should be adjusted upon the basis adopted by Mr. Peabody, but it does seem manifest that if this method of calculation is to be applied to a portion of its rates it should be extended to the whole. If that system desires to raise its live-stock rates it should correspondingly reduce its merchandise rates. If it proposes to scale up its long-distance rates on live stock, it should scale down, at the same time, the short-distance tariffs applicable to that commodity.

These live-stock rates, by the action of various competitive forces through a long series of years, have become adjusted to other rates. No other commodity is now complaining that the charge against it is too high as compared with that upon live stock. To justify an advance in these rates carriers must either show that they are altogether out of proportion with other rates or that they are in need of greater revenues. We held in deciding this case formerly that the last advances of 1903 were unreasonable, but that former advances had been justifiable. We find nothing in the case as presented now which would alter our conclusion as of the time when it was reached. There remains, therefore, the further question, Have conditions so changed between 1905 and 1907 that these advances, which were condemned then, should be sanctioned now?

The defendants urge that certain changes have occurred since 1905 which require a modification of the conclusion which we then reached. They urge:

First. That the cattle industry is much more prosperous to-day than it was then.

Second. That the cost of railroad operation has materially increased since then.

The original complaint sets forth that the cattle industry was extremely depressed, and this was relied upon by the complainant as one of the reasons which should influence us in holding the advances

unreasonable. While the Commission fully sustained this claim of the complainant, so far as the fact went, it attached but little importance to it in disposing of the case. We said, at page 348, 11 I. C. C. Rep.:

The depressed condition of this industry has been earnestly pressed upon our attention. We have expressed the opinion elsewhere that freight rates should not of necessity vary with the price of the commodity transported nor with the condition of the business affected. The members of the complainant association can not require these defendants to make good the depressed state of their industry, but where the rate limits the movement of the traffic, as to some slight extent it does here, that fact is entitled to some consideration, and there is certainly no general prosperity among these shippers in which the defendants are entitled to participate.

It is our impression that the cattle business is somewhat more prosperous to-day than it was when the case was first submitted. Market prices of beef cattle have materially advanced, but the cost of producing the animal has also increased. In its final analysis the principal item of expense in the raising of cattle is the value of the land upon which the animal grazes and from which it draws in one form and another its subsistence. All land values, especially in the sections covered by these proceedings, have materially increased since 1904, and these advances, together with other increases in cost of labor and various supplies, have added to the expense of producing cattle. The live-stock business as conducted upon the ranges and pastures covered by this proceeding may be in better shape now than it was three years ago; but it is not to-day in what can be termed a state of prosperity. It is true, now, as then, that there is "no general prosperity among these shippers in which the defendants are entitled to participate." We find nothing in the present condition of the live-stock industry which would induce us to modify our former holding.

Comparing April, 1905, when the case was originally submitted, with June, 1907, when the last argument was heard, it is true that the cost of operation had increased. The price of most materials entering into the construction, maintenance, and operation of a railway had somewhat advanced, and material increases in the wages paid railway employees had either actually been made or were in immediate contemplation. It is not certain that to-day, November, 1907, the price of materials and supplies is greater, if as great, as it was in 1905, and it is not improbable that in the near future these prices may be less. We are not advised what effect, if any, will be produced by the present financial stringency upon the rate of wages paid railway employees. The situation strongly illustrates what this Commission has on several occasions said, that freight rates as a whole should not vary with the price of the commodity carried nor with general business conditions. The railway shares in the general adversity or the

general prosperity by loss or gain in the amount of its traffic without change in the rate itself.

It is well settled that, everything else remaining the same, an increase in cost of operation would justify an advance in rates. It is equally well settled that, other things remaining the same, increase in traffic requires a decrease in rates. It may therefore happen that the increase of traffic will more than offset the increase in operating expense, and such has been the fact generally in this country for the last eight years. A table introduced by the complainant, compiled from the returns of various Texas railroads to the railroad commission of that state, forcibly illustrates this. This table, as we understand it, shows, for the eight months ending February 28, 1906, and the corresponding eight months ending February 28, 1907, the gross receipts, the operating expenses, and the net receipts of the various Texas lines. It is not necessary to encumber this report with the detailed statement, but the summaries may be given, and are:

Gross receipts for eight months ending February 28, 1906.....	\$53, 640, 893. 99
Gross receipts for eight months ending February 28, 1907.....	67, 528, 212. 07
Increase for the eight months.....	13, 887, 318. 08
Percentage of increase, 0.25+	
Operating expenses for eight months ending February 28, 1906..	38, 550, 647. 08
Operating expenses for eight months ending February 28, 1907..	45, 731, 315. 56
Increase for the eight months.....	7, 180, 668. 53
Percentage of increase, 0.18+	
Income from operation for the eight months ending February 28, 1906.....	15, 090, 246. 96
Income from operation for the eight months ending February 28, 1907.....	21, 796, 896. 51
Increase for the eight months.....	6, 706, 649. 55
Percentage of increase, 0.44+	

It appears, therefore, that notwithstanding increased expenses of operation these Texas lines show an increase in gross income of over 25 per cent: in operating expenses of over 18 per cent, and in net income of over 44 per cent.

These returns apply to operations in the state of Texas alone, but conditions throughout a large part of the territory embraced in this proceeding are fairly typified by these results in Texas. These defendants are likely to stand in much sorer need of additional revenue during a period of financial depression, accompanied by declining cost of operation than during periods of prosperity while prices of supplies and labor are advancing. An increase of operating cost in sections of the country where no corresponding increase in traffic could be expected might merit different consideration.^a

^a This was written in October, 1907. What has since occurred abundantly justifies the suggestion.

Certain of the Texas lines have urged upon the Commission with great force their financial necessities. They show that in order to properly transact the business offered extensive outlays must be made upon their properties; that under the laws of the state of Texas they can make no further issue of stock or bonds; that the money for these expenditures can only be obtained from current revenue, and they insist that their rates should be such as will provide the necessary revenue out of which to improve their properties.

The Texas stock and bond law requires the railroad commission of that state to value the various railroad properties in the state, and provides that the combined issue of stocks and bonds shall not exceed this valuation.

Many, and perhaps most, of these Texas lines were cheaply constructed at the outset and were bonded for more than the cost of construction. When, therefore, the commission of Texas valued these railroads upon the basis of cost of reproduction, as it did, the values thus fixed fell, in most cases, far below the outstanding issues of stocks and bonds.

The original cheap construction of these Texas lines answered fairly well for the movement of the lighter traffic handled at the time they were built, but to-day, under the enormous increase in business which has taken place, that construction is entirely inadequate. Most of these lines have been improved to a considerable extent, and some of them have been put into shape to meet the requirements of the present, but many of them must be virtually reconstructed in the immediate future. They must be regraded, laid with heavier steel, ballasted, and reequipped, if their business is to be transacted upon a reasonable rate at a reasonable profit. Since the roads, even after all these improvements are made, will still be, if valued upon basis of the cost of reproduction, worth less than the present issue of stocks and bonds, it follows that no funds can be provided for these improvements by the issue of additional securities, and that money must be obtained either by carrying the loan as an unsecured indebtedness or from revenue. Some of these Texas lines have strong parent companies outside the state which can supply their necessities, but the above statement applies to many of the more important Texas railroads.

While this condition is a most unfortunate one, we can not believe that it affords a sufficient ground for the establishment of rates by this Commission which would otherwise be unjust and unreasonable. It will hardly be claimed by anyone that these railroads at the beginning should have been allowed to impose upon the public rates sufficient to repay, within a few years, the original cost of construction, and there is no better reason for saying that they should be

allowed now to impose rates which will pay, out of current earnings, this cost of reconstruction made necessary by the increase in their business. Any outlay which is not required to keep the property good, or, perhaps, more accurately stated, to keep the property up to present standards, but which is necessary to provide for the handling of increased business, and which, therefore, adds to the permanent earning capacity of the property, should, as between the railway and the public, when the railway demands the right to increase a rate for the mere sake of additional revenue, be made not out of earnings but out of capital or surplus. Such has been the frequent holding of this Commission and that holding has been explicitly affirmed by the Supreme Court of the United States in a recent decision. *Illinois Central R. R. Co. et al. v. Interstate Commerce Commission*, 206 U. S., 441.

The Commission had found in that case that extensive permanent improvements had been paid for as a part of operating expenses out of current earnings and had expressed the opinion that such expenditures should not be charged against a single year, but "should be, so far as practicable and so far as rates exacted from the public are concerned, projected proportionately over the future." The appellant railway companies argued that this was clearly error upon the part of the Commission. The court held otherwise, using, at page 462 of the opinion, this language:

* * * The findings show that the old rates were profitable and that dividends were declared even when permanent improvements and equipment were charged to operating expenses. But may they be so charged? Appellants contend that the answer should be so obviously in the affirmative that it should be made an axiom in transportation. On principle it would seem as if the answer should be otherwise. It would seem as if expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic they accommodate during the period of their duration, and that improvements that will last many years should not be charged wholly against the revenue of a single year. * * *

The court then proceeded to discuss and distinguish *Union Pacific Railroad Co. v. United States*, 99 U. S., 402, and concluded its discussion with these words:

* * * But such is not the relation or concern of a shipper of lumber. His right is immediate. He may demand a service. He must pay a toll, but a toll measured by the reasonable value of the service. The elements of that value may be many and complex, not always determinable, as we have seen, with mathematical accuracy, but we think it is clear that instrumentalities which are to be used for years should not be paid for by the revenues of a day or year; and this is the principle of returns upon capital which exists in durable shape.

The situation presented by these Texas roads might afford a very good reason for allowing new securities to be issued against the money

which actually goes into the improvement of these properties; it is not a reason for an unreasonable transportation charge; nor, even if this were not so, would it be just to the public to allow the necessities of these few Texas roads to impose upon the entire community a burden which, with respect to the great majority of the lines and the greater part of the traffic involved, would be unjust and unreasonable.

It is our opinion, therefore, that the advances shown in the appendix to our former report, which is referred to and made a part of this report, which were effected by the defendants during the year 1903, were unjust and unreasonable; that the present rates produced by those advances are unjust and unreasonable; that the rates in effect previous to said advances would be just and reasonable and ought not to be exceeded for the future.

It will be seen by reference to this appendix that the advances thus condemned are but a small part of the total advances made during the years 1898-1903, inclusive.

On June 1, 1894, railways entering the city of Chicago imposed a terminal charge of \$2 per car for the delivery of carloads of live stock at the Union Stock Yards. This complaint alleges that the imposition of that terminal charge, which is still in effect, is unjust, unreasonable, and discriminatory, and asks that the same be abolished.

The lawfulness of that charge has been the subject of extensive litigation before this Commission in the past, and we may refer to the various reports touching that subject without attempting to repeat here the facts involved. *Cattle Raisers Asso. of Texas et al. v. Fort Worth & Denver City Ry. Co. et al.*, 7 I. C. C. Rep., 513; *ibid.*, 7 I. C. C. Rep., 555a; *Cattle Raisers Asso. of Texas et al. v. Chicago, Burlington & Quincy Railroad Co. et al.*, 10 I. C. C. Rep., 83; *ibid.*, 11 I. C. C. Rep., 277; *ibid.*, 12 I. C. C. Rep., 507.

The stock yards at Chicago are owned by the Union Stock Yards & Transit Company, which also owns the tracks connecting the lines of the various railways entering Chicago with the stock yards. Previous to June 1, 1894, the Stock Yards & Transit Company had allowed the various railways to operate their trains of live stock over its tracks to the stock yards without payment of other compensation than an unloading charge of 25 cents per car; but beginning June 1, 1894, they imposed for the use of these tracks a trackage charge which varied, in different cases, according to the length of the haul, from 80 cents to \$1.50 per car. Thereupon the railways imposed the \$2 terminal charge.

The Commission held that previous to June 1, 1894, rates on live stock to Chicago had included a delivery at the stock yards; that these rates were sufficiently high, and that the cost of this service had been in no way increased on June 1, 1894, except by the imposition of

this trackage charge. We therefore concluded that the imposition of that charge was unjust and unreasonable, except in so far as it was justified by the trackage charge then first made by the Stock Yards & Transit Company, and we allowed, for reasons stated in the original opinion, the imposition of a uniform charge of \$1 by all the defendants.

If the reductions ordered in this case are made the rates thus established will still be, from all the territory involved, higher—in many cases materially higher—than they were on June 1, 1894, and immediately previous thereto. We are of the opinion that if these reductions are made the rates thus established will be sufficiently high to include a delivery at the stock yards, and that no terminal charge in addition to the rates so fixed should be allowed in excess of \$1 per car.

After the making of its order by the Commission in the original case, directing that the terminal charge should not exceed \$1, a petition was filed in the circuit court, on the part of the Commission, to enforce obedience to that order, and this proceeding came by appeal into the Supreme Court of the United States. It appeared in the report of the Commission, which was before the Supreme Court in that proceeding, that subsequent to June 1, 1894, rates from certain sections in the southwest to Chicago had been reduced by the amount of 5 cents per 100 pounds, or from \$10 to \$12 per car. This left the total rate from those points to Chicago less than it was before the imposition of the \$2 charge, and since there was nothing to show why this reduction had been made the Supreme Court was of the opinion that it must be assumed, in the absence of such testimony, that the total rate, including the terminal charge, was, after this reduction, reasonable, and therefore that the terminal charge might be properly imposed upon shipments from that territory to which the 5-cent reduction applied. Since, further, the report of the Commission did not define that territory the court held that the order of the Commission by reason of this indefiniteness could not be enforced in any part, and dismissed the petition of the Commission without prejudice as to the territory not covered by the 5-cent reduction.

The defendants claim that with respect to the territory covered by the 5-cent reduction this terminal charge has become *res judicata* by this decision of the Supreme Court and that the Commission can no longer examine that question with respect to this territory. While we hold otherwise, since the advances made since the decision of the Supreme Court have more than offset the reduction of 5 cents, it seems proper to define that territory in order that the court, should it be of a different opinion, may modify our order or remand the case to the Commission for the purpose of doing so upon its present record. That territory was as follows:

The entire state of Texas north and west of the Galveston, Harrisburg & San Antonio Railway and the Houston, East & West Texas Railway, including stations on the former and excluding those on the latter; also all stations in Indian Territory and Oklahoma Territory upon the Missouri, Kansas & Texas Railway, the Rock Island system, including the St. Louis & San Francisco Railroad, and the Atchison system.

It should be carefully noted that this is not a reduction in rates, but the condemnation of an advance, and that the advance which we condemn was not a first nor even a second, but a third advance made within the period of three years. It should be further noted that the rates which we leave in effect are higher than these carriers had maintained save for a single month from the time tariffs were first filed with this Commission down to the date of the advance.

These advances were made during the year 1903 and were generally 3 cents per 100 pounds. In a few cases they were as high as 5 cents and as low as one-half cent. It is evident that in such instances it was the purpose of the carriers to change the relation in rates. Presumably the old relation was wrong in the opinion of the carriers and the present relation is right. If we were simply to order a reduction to the original basis the present relation would be disturbed in these instances, and yet we can not well make any different order, since these rates have not been specially referred to. The better way seems, therefore, to be to allow the carriers sufficient time within which to put in rates in substantial accord with this report, and the making of an order will therefore be postponed until July 1, 1908.

Questions as to reparation are reserved and will be dealt with as specific claims are presented. It is proper to state here, however, that we have decided that no reparation can be allowed upon claims accruing prior to August 29, 1906, when the complainant filed its petition with the Commission to proceed under the amended act.

KNAPP, Chairman, dissenting:

I am unable to agree with the conclusions of the majority in this case and will briefly indicate the grounds of my dissent. In my judgment the following propositions are virtually admitted or clearly established by the facts and circumstances disclosed:

1. The average selling price of cattle in the markets of consumption is now and for some time past has been materially greater than it was during most of the period when the lower rates prevailed. It is true that this increase in price was not coincident with the advance in rates nor appreciably caused by that advance, but the fact is practically undisputed that market values since the former decision have been substantially greater than they were when the lower rates

were in force. In other words, the cost of carrying to the market has averaged a smaller percentage of the value of the commodity, since the first report in this case, than it averaged under the previous rates. Regarded as a tax the rates now condemned are certainly not more burdensome than they were under former conditions. This increased value of the property may not of itself justify an increase in the transportation charge, but it is a circumstance which may properly be taken into account in determining the reasonableness of the rates in question.

2. Since the first report there has been a marked and unavoidable increase in the cost of operating the defendant roads, and that increase, so far as can now be seen, is likely to be permanent. Not only have materials and supplies of nearly every kind commanded higher prices, but in a variety of ways the operating conditions and requirements have involved greater outlays, while the item of wages has materially increased. For example, in the early spring of 1907 there was an increase which amounted, as is reliably estimated, to an average of 10 per cent for all classes of employees on the defendant railways. Bearing in mind that the wages paid to employees are fully two-thirds of the total expenses, it will be seen that this increase of a year ago amounted to a large sum in the aggregate, to say nothing of prior increases made about the time these cattle rates were last advanced. Without taking up the matter in detail, it is sufficient to refer to the fact of common knowledge that the expense of conducting railway operations has been materially greater during the last two or three years, and will probably continue to be greater for an indefinite period. If these carriers were not receiving under former rates a larger revenue than they were entitled to, this increased cost of operation justifies increased earnings, unless the increased cost is offset by proportionate increase in the volume of traffic. While the entire business of these lines increased greatly during the last few years, I do not understand that there was a corresponding increase in this particular traffic. Its volume appears to grow only moderately, and there is nothing to indicate a more rapid increase in the future. Increase of traffic generally may compensate for increased expenses, and that increase may be so great as to require a reduction of charges, but this, in my judgment, would hardly warrant the reduction of rates on a particular commodity whose volume remains fairly stationary.

3. The record in this case convinces me that these carriers handle no other commodity, moving in large volume and contributing a substantial part of their earnings, which is less profitable than the cattle traffic at the rates now in force. It is an expensive and somewhat hazardous traffic, requiring comparatively rapid movement and involving a large return haul of empty cars. I am satisfied that

the defendants ought not to be required to shrink their earnings from the transportation of live stock, if their aggregate earnings are not now excessive, because there is no other traffic on which the rates could be justly increased to make up for the loss resulting from a reduction of these cattle rates. This is a feature of the case which seems to me quite important. Having reference to the territory in which these lines mainly operate and the character of the traffic on which they must rely for the bulk of their revenues, it seems clear to me that the rates in question are relatively among the lowest as respects both gross and net earnings per car or per 100 pounds. This being so, there would be no warrant for imposing higher charges upon other commodities to compensate for reduced earnings upon this particular traffic. Therefore, so far as the reasonableness of these rates is determined from the standpoint of comparative earnings, I entertain the belief that the present rates are not excessive. They ought not to be reduced, in my judgment, unless there is something in the nature of this traffic which requires that the rates at which it is carried shall be relatively lower than they have been since the last advance, or the aggregate earnings from all traffic can be diminished without injustice to the carriers.

4. It is evident to my mind that the earnings of these carriers are not excessive. Taken together or separately, so far as they operate mainly in the territory affected by the advance in question, their average earnings for the last few years, leaving out of account the less favorable results in previous years, do not indicate that they should be compelled to perform the transportation service required in that section at lower cost to the public. In no case has the return to invested capital been more than moderate, in most cases it has been actually meager. Even in the recent period of exceptional prosperity, in which these lines undoubtedly shared, the amounts paid in interest and dividends were comparatively small in practically every instance. It is of course true that they showed handsome earnings during a season of phenomenal business, but the results then obtained ought not to be accepted, it seems to me, as proof that their cattle rates were unreasonably advanced.

In the majority report the eight months *ending* February 28, 1906, are compared with the eight months *ending* February 28, 1907, and this comparison shows an increase in the latter period of 44 per cent in net income, as against an increase in gross income of 25 per cent and an increase of operating expenses of 18 per cent. Had the comparison been made between the eight months *beginning* February 28, 1906, and the eight months *beginning* February 28, 1907, the net income on many of the lines would have shown a positive decrease, while a comparison between the eight months ending February 28,

1907, and the eight months ending February 28, 1908, would show a much greater loss. It is sufficient upon this point to refer to an official statement of the Texas Railroad Commission, issued on the last-named date, which gives the earnings and expenses of the railroads of that state for the last six months of the calendar year 1907, and compares the same with the last six months of the calendar year 1906. The showing in a word is a decrease of 3.85 per cent in gross income, an increase of 16.63 per cent in cost of operation, and a decrease of 41.82 per cent in net income from operation. Nothing more than this seems to me necessary to prove that the earnings of the defendant lines, whether gross or net, whether on cattle traffic or on all traffic, are from no point of view excessive.

5. All of these roads require considerable outlays, and most of them require heavy expenditures to put them in proper condition for satisfactory service to the public. Indeed, as I see the matter, there is nothing so much needed in the section of country mainly affected by the rates in question as the improvement and extension of its railway facilities. It is a region of vast extent, capable of rich and rapid development, which ought to have now and must have in the future, if its prosperity is to continue, largely augmented and perfected means of railroad communication. It needs more roads and better roads, with increased speed, convenience, and safety, much more than it needs lower rates of transportation. Indeed, I am confident that the general public throughout that territory, including the cattle raisers themselves, will be much less benefited by reducing these rates than they would be by continuing the present rates and devoting the difference to improving the railways on whose service they must depend. With all respect for the views of the majority, with whom I regret to disagree, I am constrained to believe that a different conclusion would be supported by considerations of general public welfare throughout the cattle-raising territory.

One further observation. There is nothing to indicate that the rates now in force restrict the volume of cattle traffic or appreciably affect the prosperity of the cattle industry. The traffic moves freely from all points of origin under the present rates and will not be measurably increased by the proposed reduction. There is no charge of discrimination. The relation of rates as between different sections of production and the various markets to which shipments are made has not been criticised in this proceeding. The sole contention of complainant is that all these advanced rates are unreasonably high, and that contention is mainly based upon the fact that they were formerly lower. But this fact of itself, according to a recent decision of the Supreme Court, carries with it no presumption

that the advance was not rightfully made, and I am of the opinion that its justification has been fairly established. It seems evident to me that a reduction of 3 cents per 100 pounds in these cattle rates will not by the smallest fraction lessen the price paid by the consumer of cattle products, and I seriously doubt whether it will be of any appreciable benefit to the farmer or ranchman. It amounts in the aggregate to a very large sum, upwards of \$1,000,000 a year according to reliable estimates, most of which will go, as I see the situation, to the middlemen and the packers.

In my judgment the rates in question have not been shown to be unreasonable, and I am therefore of the opinion that the complaint should be dismissed.

13 I. C. C. Rep.

47251—08—30

No. 1305.

ROYAL COAL & COKE COMPANY

v.

SOUTHERN RAILWAY COMPANY.

No. 1306.

TENNESSEE COAL COMPANY

v.

SOUTHERN RAILWAY COMPANY.

No. 1307.

MINERSVILLE COAL COMPANY

v.

SOUTHERN RAILWAY COMPANY.

Submitted February 29, 1908. Decided April 13, 1908.

The defendant, the Southern Railway Company, on its Coster or Knoxville division, had in effect a plan of distribution of coal cars during periods of car shortage whereby the available cars were divided between the mines furnishing the defendant with less than their total output for its fuel supply and the purely commercial mines, on the following basis:

The tonnage of the cars for railway fuel supplied to the fuel-contract mines was deducted from the rated capacities of such mines, and the remainder was considered the rating of such mines on which they shared with the commercial mines in a pro rata distribution of the car tonnage available for commercial shipments.

This plan of car distribution applied only to cars assigned for the carrier's own fuel supply; there were no individual cars or cars owned by others than the carrier itself on that division; and the defendant treated foreign railway fuel cars as though they had been commercial cars, i. e., the billing of such cars was respected, but they were charged against the mines to which they were assigned as commercial cars.

13 I. C. C. Rep.

The petitions did not complain of the defendant's method of rating the various mines; but the evidence introduced to prove the discriminations effected by the above plan of car distribution involved testimony showing the progressively decreasing relative ratings for the commercial mines that resulted from the greater relative car supply allotted by the defendant to the railway fuel contract mines. The plan of car distribution, however, is in these cases the subject-matter of the complaint, not the mine ratings.

Upon the facts shown, it is *Held*:

1. That the plan of car distribution practiced by the defendant was unduly preferential of the fuel-contract mines, and resulted in an unreasonable disadvantage to the purely commercial mines.
2. That in the matter of car distribution, where there is an inadequate supply of coal cars, the only regulation or practice in respect to the transportation of coal from the mines that is just, fair, and reasonable to be hereafter followed is to allow to each mine its fair and just proportion of the coal cars, estimated upon its justly ascertained capacity, and without regard to whether the mine furnishes partly fuel coal and partly commercial coal, or commercial coal only.
3. That the carrier should publish, or post for convenient inspection, at frequent and regular intervals, the ratings of the various mines and the car tonnage received by them within the period covered by the report; in cases where commercial mines have received more or less than their equitable pro rata of the car tonnage during any particular period, the overplus or shortage for such mines should be adjusted, as far as possible, within the period next succeeding, and such correction should be shown in the subsequent reports.
4. That the carrier must be free to contract for the total output of a mine, if it so desires; or it may contract for any part thereof less than the whole; and it is entitled to get its fuel first. If, however, a mine contracts to furnish only a part of its output to the carrier for fuel, and if the filling of its contract with the carrier calls for its full pro rata of cars, or more, then it should receive no other cars for commercial shipments. If such a mine in filling its contract to supply fuel coal does not exhaust its equitable pro rata of cars, then cars should be given it for commercial shipments sufficient to complete its full pro rata share of all available cars.
5. That the occupation, the user, and the consequent reduction of the available equipment of the carrier are the vital matters in all plans of car distribution in times of shortage.
6. That the money damages alleged by the complainants, the Tennessee Coal Company and the Minersville Coal Company, were not proven with sufficient certainty to warrant the Commission in making any award, even if it had jurisdiction in such cases.

Charles F. Diggs and William A. Pless for complainants.

Claudian B. Northrop for defendant.

George S. Patterson and George V. Massey in support of the Rule of the Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complaints in these three cases were filed October 14, 1907.

In case No. 1305 the Royal Coal & Coke Company, a corporation existing under the laws of the state of Tennessee, after describing the location of its mines in the Coal Creek district, in Tennessee, on 13 I. C. C. Rep.

the lines of the defendant carrier, the Southern Railway Company, and having set forth that the defendant is a common carrier subject to the act to regulate commerce, alleged: (1) The interstate character of the complainant's shipments of coal; (2) the insufficiency of the defendant's equipment of coal cars—commonly called a car shortage; and (3) the duty of the defendant under the circumstances to distribute its coal-car equipment pro rata among all the coal mines requiring the use thereof without undue discrimination in favor of any mine or mines and without unjust prejudice to the rights of the complainant.

The complaint charges that the plan of car distribution adopted by the defendant is unjust and unreasonable, discriminatory, and unduly preferential to the fuel contract mines, and unduly prejudicial to the mines selling commercial coal. This plan, briefly stated, is as follows:

The tonnage of the cars for defendant's railway fuel supplied to the fuel contract mines was deducted from the rated capacities of such mines and the remainder was considered the rating of these mines on which they shared with purely commercial mines in the pro rata distribution of cars available for commercial shipments. This plan is illustrated by complainants as follows:

"Two mines, designated as A and B, are rated by the defendant at a daily loading capacity of 100 cars each. On a given day there are but 100 cars available for both mines. Mine A loads 50 of these cars as so-called "arbitrary," or "preferential," or "railway company fuel cars" for defendant, while mine B loads none. Said 50 cars are subtracted from mine A's original loading capacity of 100 cars daily, leaving the remaining available 50 cars for commercial coal to be divided between the two mines on the basis of the new rating of 50 cars daily capacity for mine A and 100 cars daily capacity for mine B, thereby giving to mine B $33\frac{1}{3}$ cars and to mine A $16\frac{2}{3}$ cars of said 50 cars, which, added to the 50 cars loaded for company fuel, gives mine A $66\frac{2}{3}$ cars, and mine B $33\frac{1}{3}$ cars out of the original 100 available cars."

Case No. 1306, wherein the Tennessee Coal Company is complainant, is in substance the same as the case of the Royal Coal & Coke Company, but asks damages in the sum of \$5,000.

In case No. 1307 the Minersville Coal Company follows the allegations of the preceding cases, but claims damages in the sum of \$10,000.

The Southern Railway Company, the defendant, filed answer to each of the complaints November 6, 1907, in which it admitted the interstate character of complainants' shipments, and as to the insufficiency of equipment, stated that "at certain seasons of the year it has an ample supply of coal cars to meet the demands of all shippers

of coal on its line, while at other seasons of the year there is a shortage of coal cars;" and that "it makes every effort to distribute and divide the cars among its various shippers on all its divisions in accordance with a fair and just pro rata, and without any unjust, undue, or unreasonable discrimination in any manner whatsoever;" that this result is accomplished by the method it pursues, which it illustrated as follows:

Let it be assumed that a mine has a daily capacity of 1,000 tons, or 25 cars averaging 40 tons each. Let it be assumed further that such a mine has a fuel contract with the Southern Railway Company under which it is obliged to furnish a minimum of 400 tons, or 10 cars per day.

The shipment of this coal for fuel purposes reduces the capacity of this mine for commercial shipments to 600 tons per day instead of 1,000 tons, and it is given its pro rata share of equipment available for commercial shipments on this basis, and this applies to all of the fuel mines in the Coal Creek district.

At the hearings at Knoxville, Tenn., the three cases, by stipulation of counsel, were consolidated and heard together. The cases were argued at Washington, D. C., orally and by briefs. The facts in this case are substantially as follows:

The complainants are corporations mining bituminous coal in the Coal Creek district of Tennessee, on the Coster or Knoxville division of the Southern Railway Company, and shipping coal over the rails of the defendant into the Carolinas and Georgia. There has been a shortage of coal cars on this division of the Southern Railway for a number of years. At no time during the last three years has there been a full supply of coal cars on that division except during the month of July, 1907. This complete supply of equipment covered the entire month and was used as a means of rerating the mines on the basis of actual shipments. There is practically no controversy as to the plan of distributing cars in cases of shortage as hereinbefore stated and illustrated by both the complainants and the defendant. The effect of the rerating of the mines on the basis of actual shipments during the month of July, 1907, was to raise the relative percentage of the ratings of the fuel mines and to lower the relative percentage of the ratings of the purely commercial mines, which was brought about in this way. Prior to the month of July no mine had a full supply of cars, but the fuel mines were allotted a larger total proportion of the available car supply than fell to the purely commercial mines and had steadier work to give their operatives, and labor naturally drifted to the fuel mines, leaving the commercial mines somewhat crippled for men.

The mines shipping railway fuel do get a larger proportion of the total cars available, and because of this they enter into fuel contracts with the carrier at a price somewhat lower than the average market price of coal. As a result they secure greater steadiness of work for

their miners, a larger total output, certainty of part of their income, and a chance to obtain at least a part of the commercial prices for their output after supplying the company fuel.

The Southern Railway buys its fuel from the various coal-mining districts along its own line and along the lines of other roads, at mine prices ranging from 72 cents to \$1.10 per ton, and consumes about one-half of the total output of the Coal Creek district; the price paid by it in this district recently has been not above \$1.10 per ton, which is the highest price it pays for any coal at the mines. It buys such coal under contracts for various periods for so many tons per month, and its contracts are not materially different from those of other large consumers of coal. There are no private or individual cars belonging in this coal district. The defendant respects the billing of cars of other railroads which are sent into these mines for loading with coal for railroad use, counts them against the mines to which they are sent as commercial cars, and does with these foreign fuel cars what the complainants contend it should do with respect to its own fuel cars.

The defendant's plan of car distribution as affecting its rating of the mines produces a result unduly prejudicial and disadvantageous to the purely commercial mines in that they are progressively restricted in the allotment of cars. In view of the facts the question arises, What would be a reasonable and just plan of car distribution in cases of car shortage?

This Commission, in its report to Congress in response to the joint resolution approved March 7, 1906, on the subject of railroad discriminations and monopolies in coal and oil, on page 68, referring to the section of country in which the investigation had been made, discussed the question of car distribution generally and said:

The prevailing rule is that cars in which fuel coal was loaded were not counted against the percentage of cars allotted to the operator furnishing such coal, but that fuel-coal cars were arbitrarily allotted to the operators furnishing such coal over and above their percentage allotment.

The reason advanced by the officers of the railroad for this was that it enabled them to get cheaper fuel, in that an operator loading fuel coal would get the cars necessary to carry the same over and above the percentage he was entitled to under the system of car distribution in effect, and that he would therefore be willing to make a low price on fuel coal in order to keep his colliery running regularly. The result of this was practically a payment by the operator to the railroad company for cars by way of reducing the price of fuel coal, and while the profit of the operator on fuel coal may not be large, it enabled him to keep his miners regularly employed and his plant in operation and gave him an advantage over a competitor who has no order for fuel coal.

This system of allotting cars for fuel coal and not charging the same as against the percentage of the operator receiving the same is unjust and unfair unless fuel coal is taken from all of the mines on the line of the road in the same proportion that cars are distributed.

On page 69 the Pennsylvania Railroad Company's plan was set forth as follows:

Commencing January 1, 1906, assigned cars—i. e., cars for Pennsylvania Railroad fuel supply, foreign railroad cars specially consigned for the fuel supply of railroads consigning such cars, and individual cars assigned by the owners to specified mines for loading—will be charged against the capacity of the mines at which they are placed. The difference between the rated capacity of a mine and the capacity of the assigned cars placed for loading will be the rated capacity on which all other cars will be prorated.

The Commission expressed its opinion thereon, and said:

And this would seem to abolish the assigned cars on that road for its fuel supply and also for fuel supply of foreign roads, and the same circular covers individual cars; but where the individual cars and the assigned cars exceed the rated capacity of a mine the order mentioned does not relieve the unfair condition.

On page 80 of this report the Commission said:

Another source of discrimination in the system of car distribution on the several railroads is the assignment of cars to certain operations for fuel coal or company coal without charging such cars against the pro rata distributive shares in the equipment of the road. In other words, treating such assigned cars as arbitrary cars and also treating cars from other roads for fuel coal as arbitrary cars and not counting them against the percentage to which the operator receiving them is entitled. This method of distributing cars interferes with and to a certain extent nullifies any fair system of distribution which may be put into effect, creates inequalities and injustice as between shippers, and is frequently used by the railroad company to enable it to get its fuel supply at less than the market price for coal, and amounts to an arbitrary assignment of cars in consideration of the difference between the price the company has to pay for fuel coal and the market price thereof.

On page 81 the Commission recommended:

That after reasonable time carriers engaged in interstate commerce be prohibited from using "individual" or "private" cars for the handling of coal traffic; and further that when a carrier is unable to furnish all the cars required by all the shippers upon its line, all cars in service on the road be treated as the equipment of the company and subject to distribution according to the system or plan in effect at that time.

In the circuit court for the eastern district of Pennsylvania, the Logan Coal Company, which owned 150 private or individual coal cars, filed a petition December 17, 1906, for mandamus against the Pennsylvania Railroad Company, to require the defendant to cease from subjecting the company to undue, unjust, or unreasonable discrimination in the distribution of cars under the rule of the Pennsylvania Railroad quoted above. Answer was filed and the case was heard and decided by Holland, district judge, July 1, 1907, 154 Fed. Rep., 497. The court said:

The relator is not in any sense discriminated against. First, it has the use of its own cars and its share of company cars upon a basis which gives it a certain advantage over its competitors, and, in addition, it receives a certain compensation from the railroad company for its cars. They are placed upon the tracks of the defendant company and the engines and the train crews and the moving facilities of the company are taxed to

transport these individual cars, and there is no reason that I can see why they should not be regarded in the distribution of cars to shippers as part of the equipment, in order that the defendant company may be enabled to treat all shippers the same, and, as near as may be, at all times in the year furnish car facilities for the transportation of coal along its line upon a basis fixed upon the rated capacity of the mine as ascertained by the method adopted by the railway company. * * *

What has been said in regard to individual cars applies to the use of fuel cars, whether they be those of the defendant company or fuel cars of other corporations purchasing coal from the relator. They should be treated the same as individual cars in the distribution of available cars, and the defendant company in its treatment of these cars by the order of January 1, 1906, in no way that we can see unduly or unreasonably discriminated against the relator.

That case merely held that granting the rule to be as set forth in the petition, the relator, which owned individual cars, was far from being unduly discriminated against, or unduly prejudiced by said rule, in fact had an advantage over its competitors, and that, therefore, the petition for mandamus should be dismissed. It does not approve the Pennsylvania Railroad Company's plan of distribution, but condemns it by saying:

The general trend of the decisions is to the effect that all cars, whether individual cars or owned by the railroad company, or assigned by other railroad companies for fuel, shall be treated as an available car equipment as a whole, distributable pro rata, to shippers desiring their use along the line, upon a basis giving each equal facilities with the other.

This Commission did not indorse or commend the plan of the Pennsylvania Railroad Company, nor was that plan approved by Judge Holland in the Logan coal case.

On January 16, 1907, the United States ex rel. Pitcairn Coal Company, which owned no individual coal cars, filed a petition in the circuit court for the district of Maryland for a mandamus to require the Baltimore & Ohio Railroad Company et al. to cease from subjecting the relator and other coal companies on the Monongah division to undue and unreasonable discrimination in the shipping and transportation of coal. The case was decided by Morris, district judge, June 11, 1907, 154 Fed. Rep., 108. The relator had charged that, whenever in any district the supply of cars was insufficient to fill all orders, cars were supposed to be distributed, and the Baltimore & Ohio Railroad Company alleged that it had distributed such cars on a percentage basis, to all the mines in such district, but in the distribution of cars on a percentage basis, before distribution was made, certain arbitrary assignments of cars were made, reducing the total number of cars to be distributed.

In discussing this case the court said:

The purchases of coal at the mines by the Baltimore & Ohio Railroad Company itself amount to about 5,000,000 tons a year; the consumption being greatest in the winter time, when the car shortage is most felt. This coal is delivered by the mines from which it is purchased directly onto the engines, tenders, and company's cars.

and does not pay freight, and does not enter into interstate commerce. It is consumed by the Baltimore & Ohio Railroad in operating its own lines. It is naturally purchased from the larger mines, having coal of the grade and price used, because they have the capacity to furnish daily the large quantity daily required by the railroad, but the coal so sold is not counted in the shipments on which the percentage rating is based.

This statement of the facts in the Pitcairn case does not apply in these cases against the Southern Railway Company, because it is conceded that even the company's fuel supply bought at the mines in Tennessee is largely hauled to, stored, and used in the states of North and South Carolina; it does enter into interstate commerce. Again, the Southern Railway Company does count its own fuel coal in ascertaining the ratings of the various mines in the Coster division, and even if defendant's own fuel were not shipped to interstate points its plan of car-distribution would interfere with and affect interstate shipments of commercial coal.

The Pitcairn case, like the Logan case, was a petition for mandamus, and was based upon a plan of car distribution, but these are the only points of similarity: The Pitcairn Company owned no individual cars, the Logan Company did; the Pitcairn Company was adjudged "entitled to a peremptory writ requiring the Baltimore & Ohio Railroad Company, in cases of car shortage, in distributing the pro rata shares of the general coal-car equipment of the railroad company according to the percentage to which each mine is entitled, to include in the available car supply as the basis of the calculation the individual cars of mine operators regularly used on the Baltimore & Ohio Railroad, not intending, however, to give to the relator, or those in like situation with him, in any event the use at any time of individual cars to the exclusive use of which other mine operators are entitled."

In the case of the *Railroad Commission of Ohio et al. v. Hocking Valley Railway Company et al.*, 12 I. C. C. Rep., 398, this Commission said:

The total of the foreign railway fuel cars, the private cars, and the system cars should be taken into consideration in determining the distribution. If the number of foreign railway fuel cars or of private or leased cars is less than the percentage or proportion of the company to which such cars are consigned or assigned, that company should be given all of the foreign railway fuel cars consigned to it and all of the private or leased cars belonging to it, and a sufficient number of system cars to make up its proportion. On the other hand, if the number of foreign railway fuel cars consigned to it and of private cars assigned to it is greater than its proportion, all such cars so consigned or assigned to it should be delivered to it and the available system cars should be divided among the other operators on the basis of a changed percentage because of the elimination of the company or companies to which the foreign railway fuel cars and private cars have been consigned, assigned, and delivered.

The railroads must have fuel; they are entitled, and indeed required by law, to take all proper and just measures to assure the regularity and certainty of their fuel supply; but in securing such supply they

are not justified either in beating down the price of coal by means of plans of car distribution or in penalizing mines that refuse to sell fuel coal by lowered mine ratings or lessened car supply.

The carrier must be free to contract for the total output of a mine, if it so desires; or it may contract for any part of a mine's output less than the whole, and it is entitled to get its fuel coal first, for without fuel it can not haul even commercial coal to its destination, to say nothing of complying with its obligations to the public at large; but in all its acts it must deal even-handed justice in the matter of car distribution as in the matter of rates. If a mine contracts to furnish only a part of its output to the railroad for fuel, and if the filling of its contract with the railroad calls for its full pro rata of cars, or more, then it should not receive other cars for commercial shipments. If such a mine in filling its contract to supply fuel coal to the railroad does not exhaust its equitable pro rata of cars, then cars should be given it for commercial shipments sufficient to complete its full pro rata share of all available cars.

We are clearly of opinion that in the matter of car distribution, where there is an inadequate supply of coal cars, the only regulation or practice in respect to the transportation of coal from the mines that is just, fair, and reasonable to be hereafter followed is to allot to each mine its fair and just proportion of the coal cars estimated upon its justly ascertained capacity and without regard to whether the mine furnishes partly fuel coal and partly commercial coal, or commercial coal only.

Two of the complainants, the Tennessee Coal Company in docket 1306, and the Minersville Coal Company in docket 1307, claim damages. A great deal of time was consumed by the complainants in attempting to show that if they had been supplied with all the cars they needed, and if they had had sufficient laborers, and if they had sold all the coal so mined and shipped at about the average mine price for that period, then they would have made a profit on a certain number of supposed tons of coal equal to the difference between the said average mine price per ton and the estimated cost of producing the coal. But the testimony as to what would have been the cost of producing the coal, making all the assumptions enumerated above, is too indefinite, as it is based upon a cost to the operator excluding fixed charges as having been paid by the coal which, during the period, was actually shipped. The testimony is not positive nor direct, but is inferential, vaguely indefinite, and altogether lacking in certainty, and, without considering the question of our jurisdiction to make an order for reparation in such cases, does not justify this Commission in making an award of damages to either company.

The conclusions of the Commission are that the plan of distribution of cars by the defendant in cases of car shortage gives an undue

and unreasonable preference and advantage to mines furnishing it with company fuel when the fuel contract calls for less than the total output of the mine, and subjects the purely commercial mines to an undue and unreasonable prejudice and disadvantage in that their pro rata shares of the coal-car equipment of the defendant are not only absolutely reduced in the daily allotment of available cars, but their relative ratings based on actual shipments in comparison with the fuel-furnishing mines of the Coal Creek group are also progressively reduced by reason of their inability to get their full share of cars; and that the only reasonable and just plan of car distribution is for the carrier to consider and count its own fuel cars in the same manner as foreign fuel cars are considered and counted, and that the defendant should be required to cease and desist from its present plan of car distribution, and within a reasonable time put in force the plan of car distribution indicated. The defendant should continue its present practice in the matter of the publicity of ratings and provide full and fair ratings of the capacities of the mines of the respective groups, publishing at regular intervals the ratings and car tonnage received by the mines within the period covered by the report. In cases where commercial mines have received more or less than their equitable pro rata of the car tonnage during any particular period the overplus or shortage for such mines should be adjusted, as far as possible, within the period next succeeding, and such correction should be shown in the subsequent reports.

No reparation should be allowed to any of the complainants.

After these cases had been fully argued the Pennsylvania Railroad Company, by its general counsel, asked to be heard with respect to the rule of that carrier referred to above. Permission to file a brief herein was granted and the brief filed.

The Pennsylvania Railroad Company, in its brief, does not discuss any decision of the courts or of this Commission concerning the matters in issue, but its whole argument is based upon a statement that the fuel coal sold by the operator to the carrier at the mine is carried thence by the carrier for its own benefit and not for the benefit of the operator. In other words, the operator in selling fuel coal to the carrier makes a purely local sale, the ultimate destination of the commodity thereafter being at the will of the carrier, and the mine operator not being a shipper at all with respect to the fuel coal delivered by him to the railroad.

This argument is ingenious, but far from convincing. If it proves anything it proves too much. Commercial coal is usually sold f. o. b. at the mines, and the routing and freight charges thereon assumed by the purchasers. Would the Pennsylvania Railroad Company contend that the tonnage of such shipments should not be charged against the pro rata shares of car tonnage to which such mines are

entitled? In both cases the available equipment of the carrier is used and the number of cars that can be furnished other shippers proportionately reduced.

Again, the argument proves too much, for if followed to its logical conclusion it would result in the condemnation of the very rule in support of which it is offered. The rule of the Pennsylvania Railroad is that: "The difference between the rated capacity of a mine and the capacity of the assigned cars placed for loading" railroad fuel supply "will be the rated capacity on which all other cars," that is, for commercial shipments, "will be prorated."

But why make such computation at all? If the contention now made in the brief of the Pennsylvania Railroad Company be true, such reduction of the rated capacity of the fuel contract mines is unfair to them. The cars should be assigned arbitrarily and without deduction from the rated capacity of the mines. The mere statement of the result of the argument refutes it. The fact of the matter is, however, that the occupation, the user, and the consequent reduction of the available equipment of the road is the vital matter in all cases of car distribution in times of shortage, and whether the cars are used for fuel supply or for commercial shipments they should be furnished the mines as hereinbefore set forth.

An order in accordance herewith will be issued.

13 I. C. C. Rep.

No. 1294.

GLENN W. TRAER, RECEIVER OF THE ILLINOIS COL-
LIERIES COMPANY,

v.

CHICAGO & ALTON RAILROAD COMPANY.

No. 1295.

SAME

v.

CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF
ILLINOIS.

No. 1317.

SAME

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted March 11, 1908. Decided April 13, 1908.

1. In establishing systems of car distribution, defendants have given the mines located on their respective lines daily tonnage ratings, which ratings are not at issue in this controversy. Under the systems established each mine is entitled daily to such percentage of cars as its tonnage rating bears to the total number of cars available for distribution for commercial purposes. Defendants' fuel cars, foreign railway fuel cars, and private cars are not charged against the distributive share of the mines to which they are assigned. Complainant contends that this plan of distribution gives to some mines more cars than they are entitled to under their several ratings, and unjustly discriminates against it and other mines and mine owners.
2. Defendants claim that the necessity for fuel with which to operate their lines gives them the right to make private contracts therefor, and that the failure to count against the mines the cars furnished for such fuel supply permits them to make advantageous contracts and to get their coal at a lower price; that if they counted their own fuel cars in the distribution they would not only have to pay a higher price for their coal, but might not be able to contract for it at all.

3. Fuel is necessary and essential to the operation of a railroad, and the right of a carrier to contract for the purchase of its fuel supply with one mine or with a number of mines must be conceded; but if a carrier and a mine owner make a contract for the fuel supply of the carrier which does violence to the act to regulate commerce or to the decisions of the courts or is opposed to public policy they are in no better position than the parties to any other contract which violates the legal principles relating thereto. A carrier can not inject illegalities in such contract and have it upheld on the ground of compelling necessity.
4. In these cases the Commission is of the opinion that as to the privately owned or leased cars and the foreign railway fuel cars the rule laid down in *Railroad Commission of Ohio v. H. V. Ry. Co.*, 12 I. C. C. Rep., 398, should apply, and that cars used by defendants upon their own lines for transportation of their own necessary fuel supply may be given in any numbers to the mine or mines from which such fuel supply is received, but if such mine or mines also ship commercial coal the fuel cars so supplied must be counted against the mine or mines.

Cassoday & Butler for complainant.

Winston, Payne, Strawn & Shaw, and *Garrad B. Winston* for Chicago & Alton Railroad Company.

W. S. Kenyon for Illinois Central Railroad Company.

Philip Barton Warren for Chicago, Peoria & St. Louis Railway Company of Illinois.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The complaint in each of the above cases was filed by the Illinois Collieries Company, but upon the appointment of the receiver for said company he was, upon petition, substituted as complainant in each case. The subject of the complaints is practically the same in all three cases, and they were heard together upon record made in No. 1294 and are to be disposed of in one report.

The Illinois Collieries Company is a corporation with principal place of business at Chicago, Ill. It is engaged in mining and selling bituminous coal, and makes interstate shipments thereof over the lines of the defendants. Its mines are in Illinois and are located upon the lines of the Chicago & Alton Railroad Company and of the Chicago, Peoria & St. Louis Railway Company of Illinois. Its mine nearest to the line of the Illinois Central Railroad Company is 200 feet from the latter's right of way, and is served by that defendant through switching arrangements with the Wabash Railroad Company. Numerous mines of the character of those owned by the Illinois Collieries Company are located upon the lines of the respective defendants.

The several defendants have contracts for their own fuel supply with certain of the mines located on their respective lines. Some of

the mines have contracts to furnish foreign railways with coal and others have contracts with purchasers who furnish private cars for the transportation of such coal. Complainant sells its coal almost wholly in the open market, and each of its mines is dependent upon the defendant upon whose line it is located for cars to transport the output thereof. Complainant has no contracts for furnishing fuel coal to the defendants, and, except in a few instances, has not used foreign railway fuel cars nor private cars during the time covered by the complaints.

In establishing a system of car distribution the defendants have given the several mines located on their respective lines daily tonnage ratings, which ratings are not at issue in this controversy. Under the system established, each mine is entitled daily to such percentage of cars as its tonnage rating bears to the total number of cars available for distribution for commercial purposes. Defendants' fuel cars, foreign railway fuel cars, and private cars are not charged against the distributive shares of the mines to which they are assigned. After the assignment of such cars to said mines, each is given the same percentage of the remaining cars available for distribution that day as if it had received no cars at all. This permits these mines to ship a greater portion of their daily output than mines having the same tonnage rating but that do not have fuel contracts with the defendants nor the use of private or foreign railway fuel cars.

Complainant contends that this plan of distribution gives to some mines more cars than they are entitled to under their several ratings, and unjustly discriminates against it and other mines and mine owners; that the increased allotment to such mines makes a corresponding decrease in the cars to which complainant and the other mine owners would otherwise be entitled, and that their interstate shipments of coal are to the extent of that decrease thus restricted.

The failure to count the defendants' fuel cars against the mines to which they are delivered was not specified in the complaint against the Illinois Central Railroad Company, but in brief and on argument it says that the question is one of great importance to it. At the time of the filing of this complaint the circuit court of the United States for the northern district of Illinois had enjoined the said defendant from counting foreign railway fuel cars and private cars against the mines to which they were assigned. The question of the Commission's jurisdiction of discriminatory practices, in the light of the decision of the Supreme Court in *Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S., 429, was decided by the Commission in *Railroad Commission of Ohio v. H. V. Ry. Co.*, 12 I. C. C. Rep., 398.

Defendants in their briefs concede that the prior holding of the Commission, in *Railroad Commission of Ohio v. H. V. Ry. Co.*, *supra*, eliminates the question of counting private cars and foreign railway fuel cars in the distribution, and that the question of counting the cars used for the defendants' own fuel is really the only question presented for determination. Defendants claim that the necessity for fuel with which to operate their lines gives them the right to make private contracts therefor, and that the failure to count against the mines the cars furnished for such fuel supply permits them to make advantageous contracts and to get their coal at a lower price; that if they counted their own fuel cars in the distribution they would not only have to pay a higher price for their coal, but might not be able to contract for it at all.

The Chicago & Alton Railroad Company has 360 hopper-bottomed gondola cars which it says are used solely for its own fuel, and which, because no shipper on its line has trestle from which to unload them, are not only inconvenient but impracticable for commercial use.

Complainant in these cases presents the following illustration, and argues that such a practice is unjustly discriminatory: A carrier offers to contract with two mines for 500 tons of coal per day, dividing the amount equally between them. The mines are each of 1,000 tons daily capacity. One mine accepts the contract, the other does not, and in turn the carrier gives the remaining portion of the contract to the first mine. The carrier has thus offered to the two mines a market created by itself; one mine has accepted the market so offered and the other has not. This leaves one mine with 500 tons of coal sold in a special market and 500 tons to find a common market, and the other has 1,000 tons to find a common market. The handling of the 500 tons sold to the carrier by the contracting mine requires the equipment of the railroad. The carrier can furnish cars for but 1,000 tons. It says it must have 500 tons for its necessary use, and sends the cars for that amount to the contracting mine. This leaves available cars of 500 tons capacity, in the distribution of which it says that it will not count the 500 tons that have been given to the contracting mine, but that it will divide the remaining cars on the basis of 1,000 tons rating for each mine, thus permitting the contracting mine to dispose of three-fourths of its output and the other only one-fourth.

The carrier says it is justified in doing this because the first mine has made a contract with it to furnish it coal, which it must of necessity have in order to operate, and as an inducement to such mine to make this contract it does not charge to that mine the number of cars necessary to handle the 500 tons sold to the carrier, and, in further consideration, permits said mine to enjoy the same propor-

tional share in the remaining cars available for distribution as if it had not sold any coal to the carrier.

If two mines of equal daily capacity are located on the line of a carrier, and one sells its entire daily output locally and the other does not sell any locally, but its entire output must find some other market, it is clear that, although the capacities of the mines are the same, and each would be entitled to the same percentage of cars if they were both offering their output to the company, the one would not be entitled to a rating because it would tender no coal and the other would be entitled to the equipment of the company for that day, and if it was sufficient to move its output, both mines would be on an equality, so far as the selling of their output is concerned. But if one mine sells one-half of its output locally and the other none at all, and the carrier has only enough cars to transport one-half the combined output of the two, it would be unfair for the carrier to rate the mine selling one-half of its output locally at the same tonnage as the other mine and give to it one-half of the cars that it had on a given day.

If a carrier assigns to or uses for the transportation of its own fuel supply only such part of its equipment as is reasonably necessary therefor, it may be asked what difference can it make to the shippers along its line whether those cars go to the mine or mines owned by the carrier or to one or more mines with which the carrier has contracts for coal? The shipper who has no fuel contract answers this by saying that when one mine has such contract with carrier and is furnished cars under it without having its distributive share of cars for commercial shipments reduced thereby, such mine is given an advantage over its competitor that has no contract with the carrier, because it is enabled to work its mine more regularly and thus to keep its property in a more efficient condition—to retain its employees and thus to operate more economically and to sell its output more advantageously in the commercial market. To this the carrier and the shipper who has fuel contract with the carrier retort: "You were given an opportunity to take a contract upon the same terms and declined to do so."

Products offered a carrier for shipment in a given locality are usually tendered because the volume produced is in excess of that consumed in the local market. The object of the transportation requested is to get the surplus to a market of consumption. It is the duty of the carrier, so far as it is in its power, to furnish the means of getting that output either from the mills or from the mines to the market.

That it is the duty of a common carrier to furnish means of transportation and to furnish them alike for all that are similarly situated the Commission has repeatedly held: *Richmond Elevator Co. v.*

13 I. C. C. Rep.

P. M. R. R. Co., 10 I. C. C. Rep., 629; *Eaton v. C. H. & D. Ry. Co.*, 11 I. C. C. Rep., 619; *Railroad Commission of Ohio v. H. V. Ry. Co.*, *supra*; *Powhatan Coal & Coke Co. v. N. & W. Ry. Co.*, 13 I. C. C. Rep., 69.

One industry may not be built up by granting to it transportation privileges which are denied to and which work an unreasonable disadvantage against another industry. All must bear their just proportion, according to circumstances and conditions, of any disadvantage that may arise from insufficiency of facilities resulting from causes which are beyond the carrier's control.

It appears that the defendant, the Chicago & Alton Railroad Company, applied its system of car distribution and ratings thereunder to three mines not located on its lines, but which it reached through switching connections with other railways. Said defendant had no fuel contracts with them, but during the months of September, October, and November, 1907, it furnished cars to said mines under their respective ratings, for the transportation of approximately 130,000 tons of commercial coal. Defendant, the Illinois Central Railroad Company's line, does not reach complainant's mines at Litchfield, although it gives such mines a rating. It does not appear that it furnished cars to these mines.

Unless for the purpose of securing its own fuel supply it is neither right nor proper for a carrier to send its cars for loading at mines that are not located upon its line at times when it could only supply the demand for cars from mines that are located upon its line, perhaps wholly dependent upon it for both cars and transportation. Such a practice necessarily intensifies an existing inability on part of the carrier to meet the demands of shippers who are dependent upon it and who have a right to rely upon its performance of its duty as a common carrier, and it curtails the already-restricted opportunities of the mines that can secure neither cars nor transportation from any other carrier.

The carrier owes a special duty to shippers who are entirely dependent upon it for transportation facilities. In fact, its first duty is to such shippers. See *Memphis Freight Bureau v. Ft. S. & W. R. R. Co.*, 13 I. C. C. Rep., 1. It may not be compelled to nor may it voluntarily divert its equipment from its own line to shippers on another line when to do so would deprive its local shippers of needed equipment. A carrier may, of course, send its equipment from its line for the things that are necessary and essential for its own operation. This right arises from considerations of public policy which recognize the duty of a carrier to operate its line, and the diverting of its equipment in that instance is predicated on necessity. It is not an inherent right that is grounded on private contract. The limit of

this right is measured by the extent of the necessity; it can not go beyond that.

Fuel is as necessary and essential to the operation of a railroad as are rails, roadbed, and other equipment. Without it a carrier could serve no one. The right of a carrier to own mines for its fuel supply is conceded in the law. The right of a carrier to contract for the purchase of its fuel supply with one mine or with a number of mines must be conceded, as must also the right to utilize its facilities in providing and transporting those materials and supplies that are essential to the operation of its lines. In fact, a carrier must arrange in advance, by ownership or contract, for its fuel supply. Otherwise its ability to perform its functions would be as uncertain as its fuel supply. For that reason a carrier may contract for its fuel supply, and in so far as the contract is not opposed to public policy or in conflict with the statutes or the rules of law announced by the courts, it must be regarded as any other private contract. Any contract of lawful subject-matter, regardless of the character of the parties, is made with reference to the law applicable thereto, and all principles of public policy involved therein, the statutes and the decisions of the courts relating thereto become as effectually a part of the contract as if they had been expressly referred to therein. If a carrier and a mine owner make a contract for the fuel supply of the carrier which does violence to the act to regulate commerce or to the decisions of the courts or is opposed to public policy, they are in no better position than the parties to any other contract which violates the legal principles relating thereto. A carrier can not inject illegalities into such contract and have it upheld on the ground of compelling necessity. Public policy has never permitted a carrier to procure its operating necessities by means of illegal contracts. The substance may be legally subject to contract, but the form of that contract must not be subject to illegal infirmities.

A carrier may lawfully get the coal that it needs so long as it does not violate the rights of or fail in its duty to the public. It must make this contract as it must make all others, keeping in view its duty to perform its public functions and to avoid injury or damage to its shippers by reason of unjust discrimination, undue preference, or unreasonable disadvantage growing out of such contract or the performance thereof. If a contract for fuel covers such supply as the carrier reasonably needs for its operation, and a period of car shortage comes, it can use its equipment to procure its fuel even though it thereby deprives shippers along its line of desired use thereof. As before observed, however, this right to so use its cars rests not upon the ground of private contract, but upon the public necessity that it have fuel. But if a carrier had a contract for more

cars of fuel per day than it needed, neither such contract, nor considerations of public policy which recognize the public necessity for fuel, would justify it during a period of car shortage in using its equipment for a superfluous supply when such equipment was demanded and needed by the shippers and the public.

It should be borne in mind that this question of car distribution is of importance only during periods when the carrier is unable to furnish all the cars desired by shippers. Generally speaking, this inability so far as coal shipments are concerned prevails during about four or five months of the winter season, when the demand for coal is greatest and the prices of coal the highest. During the other portion of the year carriers generally have a surplus of idle coal cars.

In *Railroad Commission of Ohio v. H. V. Ry. Co., supra*, the Commission held that privately owned or leased cars and cars of foreign railways sent for foreign railway fuel must be assigned to the parties by whom owned or leased, or to whom consigned, but that all such cars must be counted against the distributive shares of such parties. Any other holding would open the door to unjust discrimination between shippers of commercial coal, for it must be remembered that cars of foreign railway fuel are commercial shipments in so far as the carrier transporting them for another carrier is concerned. Such shipments may not be given discriminatory or preferential rates.

The transportation by a carrier of its own fuel over its own lines presents a somewhat different question. Conditions and circumstances vary in different localities, but where a carrier contracts for fuel coal with certain mines located on its lines and served by it, which also compete with other mines similarly located, in the sale of commercial coal, the carrier may not unjustly discriminate in favor of the mine that accepts its proffered contract and thus work undue prejudice against the mine that does not accept such contract. Conceding fully the right of the carrier to use its equipment for the purpose of securing its own fuel supply, even though shippers at the same time desire the use of that equipment, and conceding the right of the carrier to secure its fuel supply either from mines which it owns or those whose entire output it purchases, we are led to the conclusion that where a carrier purchases a portion of the output of a mine which is competing with other mines on its lines in commercial markets it may not discriminate in favor of such mine by failing to count against it in the distribution of cars those cars which it furnishes to that mine for its own fuel.

In these cases we think that as to privately owned or leased cars and foreign railway fuel cars the rule laid down in *Railroad Commission of Ohio v. H. V. Ry. Co., supra*, should apply. We think

that the Chicago & Alton Railroad Company has a right to confine the hopper-bottomed cars referred to to the hauling of its fuel supply, but that they, together with all other cars used by the defendants upon their own lines for transportation of their own fuel supply, should be counted against the distributive share of the mine or mines to which given, except in cases where the carrier owns or purchases the entire output of the mine for its fuel supply.

An order will be entered accordingly.

13 I. C. C. Rep.

No. 1040.

CARDIFF COAL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; WABASH RAILROAD COMPANY, AND CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY.

Submitted January 27, 1908. Decided April 6, 1908.

1. Complainant formerly was allowed through routes and joint rates over defendants' lines from its coal mines to certain interstate points, but subsequently this privilege was withdrawn. Complainant's daily capacity is in excess of the requirements of the local markets, and the complaint is filed for the purpose of securing a wider market. While such through routes and joint rates were in force complainant was able to sell a substantial volume of coal to the interstate territory in question, but since such withdrawal the greater part of this trade has been lost. While denying to complainant such an outlet from its mines, through routes and joint rates are maintained to such interstate points from other near-by mines. Upon petition of complainant for an order reestablishing the through routes and joint rates previously in effect; *Held*, That the routes over other lines referred to in the opinion are not reasonable or satisfactory; that complainant should again be accorded the through routes and joint rates over the lines of defendants, and that the refusal to establish through routes and joint rates from complainant's mines is an unlawful discrimination.
2. An interstate carrier, in order to build up enterprises of the same character on its own line and to prevent the trade of its local industries from being displaced by the competition of manufacturers of the same commodities on connecting lines, can not deny to industries on the lines of such connections the benefit of through routes and joint rates; nor is the fact that the revenues of the carrier may be reduced by establishing such through routes and joint rates a material consideration.
3. It may be laid down as a general rule admitting of no qualification that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the service has the right to have it moved and to have reasonable rates established for the movement, regardless of the fact that the revenues of the carrier may be reduced by reason of his competition with other shippers in the distant markets; and he has the right also to have the benefit of through routes and reasonable joint rates to such distant markets if no "reasonable or satisfactory" through routes already exist.

4. Complainant asks for the establishment of through routes and joint rates over the St. Paul in connection both with the Wabash Railroad and the Chicago, Indiana & Southern. If reasonable and satisfactory through routes existed to the points in question over *one* of those connecting lines, it would not be competent for the complainant to ask for the establishment of through routes to the same points over the *other* connecting line. Nor does the Commission regard it as competent, unless there are special circumstances justifying it, for a shipper, in the absence of any reasonable or satisfactory through routes, to ask for the establishment of such routes over *two* connecting lines.
5. While the Commission's power to establish a through route and joint rate is limited to particular cases where a reasonable or satisfactory through route does not already exist, yet such power is not confined to cases where enforcement of other provisions of the regulating statute is sought.
6. The second paragraph of section 3 of the act, providing that no carrier shall be required to give the use of its tracks and terminal facilities to another carrier engaged in like business, has no application to such a state of facts as this record presents. From no point of view is this a proceeding to acquire the use of one line by another; it is simply an effort on the part of complainant to reach certain interstate points with its coal.

George C. Mastin, John J. Sherlock, and Frank Crozier for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Edward T. Glennon, Robert J. Cary, Bertrand Walker, and Herbert D. Howe for Chicago, Indiana & Southern Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The excess output of Indiana and Illinois coal mines not required for local consumption has a restricted market. The extensive coal measures of Ohio and West Virginia on the east, of Kentucky and Tennessee on the south, of Kansas and Oklahoma on the southwest, and of southern Iowa on the immediate west, not only yield coals that are suitable for the manufacturing requirements of those states, but produce a tonnage largely in excess of local needs. The coal operators of those regions are therefore able to compete in the markets of adjoining states; and as their coals are usually as good and in some cases superior to the Illinois and Indiana coals, this competition is a more or less active one; coal from some of those sources reaches Milwaukee, Sheboygan, Manitowoc, Duluth, and other ports on the Great Lakes that otherwise would find their wants supplied from the mines of Illinois and Indiana. The result of these conditions surrounding the Illinois coal fields is that the market for its excess output is largely limited to western and southern Wisconsin, southern Minnesota, eastern Nebraska, South Dakota, and northern Iowa. It is important

therefore to the Illinois operators to have free and ready access to all points in this restricted area; and it is especially important to the group of mines in northern Illinois. Certain local conditions that are well understood in the coal trade combine to give to the southern, central, and northern groups of mines, into which the coal fields of Illinois have long been divided for trade and rate purposes, a competitive equality in the interstate territory in question. The benefit of differentials in rates of 40 and 70 cents a ton in favor of the northern group as against the central and southern groups, respectively, is largely lost to the northern group by reason of the fact that the cost of production in the southern and central groups is less than in the mines of the northern group. Moreover, the coal of the southern group is superior in quality to the coal produced both in the northern and central groups; and this gives it something of an advantage in reaching consumers in territory that is also open to the other two groups. Other conditions not necessary now to be described have the effect, as is said, of practically excluding the coal of the northern group of Illinois mines from the great coal-consuming center at Chicago.

These geographical and other natural conditions which tend as stated to narrow the complainant's outlet to consuming markets doubtless explain the urgency with which it has pressed upon our attention this application for an order establishing through routes and joint rates from its mines at Cardiff, Ill., to points on the line of the principal defendant, the Chicago, Milwaukee & St. Paul Railway Company, hereinafter for greater brevity referred to as the St. Paul railroad. The complainant's daily capacity is much in excess of the requirements of the local markets which it is now able to reach; and for the purpose of securing a wider field in which to exploit its coal it has come before the Commission demanding the restoration of the through routes and joint rates from its mines to points on the line of the St. Paul in the interstate territory heretofore described which were formerly open and in force for a period of a year or more, and under which the complainant shipped coal in substantial quantity to those markets.

A brief statement of the geographical position of the complainant's mines at Cardiff and their relation to other mines in the northern group and the general relation of the northern group to the interstate territory in question will be helpful in understanding the merits of the controversy:

The Wilmington field lies about 50 miles southwest of Chicago. The only other fields in the northern group of mines are the Third Vein and Peoria fields, the former lying about 50 miles west of the Wilmington field and the latter about 60 miles southwest of the Third Vein field. In the Wilmington and Third Vein fields coal is mined

under substantially similar conditions and at about the same cost. The cost of mining in the Peoria field is about 25 cents per ton less than in either of the other two fields. Cardiff, at which the complainant conducts its mining operations, is at the extreme south end of the Wilmington field. It is reached by the Wabash Railroad and also by the Chicago, Indiana & Southern Railroad. Six or eight miles north of Cardiff is the town of Wilmington, where there are important mining operations, all served, as heretofore stated, by the Elgin, Joliet & Eastern Railroad. The mines at Wilmington enjoy the benefit of through routes and joint rates via the Elgin, Joliet & Eastern to all points on the line of the Chicago, Milwaukee & St. Paul Railway Company. Neither of the two last-mentioned roads reach complainant's mine at Cardiff. But a reasonably direct outlet to the coal markets on the line of the St. Paul Railroad can be had over the Chicago, Indiana & Southern Railroad, which passing to the west through Cardiff enters the Third Vein field and passing through it connects with the St. Paul both at McNabb and at Seatonville. And fairly direct through routes to the points in question could be established over the Wabash Railroad through Chicago. During a period of about fourteen months prior to July, 1905, when, as before stated, it enjoyed the benefit of through routes and joint rates through Seatonville to points on the line of the St. Paul, the complainant through that junction was able, at points in the interstate territory referred to, to dispose of all its output not required to fill local contracts. The demand at those points was a growing demand and was absorbing the increasing excess resulting from the development of complainant's mines. It seemed to be agreed on the argument that this trade, amounting to a substantial tonnage, has been lost to the complainant by reason of the cancellation of the through routes and joint rates which it now desires to have restored, and the record seems to show this to be the fact.

The complainant for some time has been accorded through routes and joint rates from its mines at Cardiff to points on the Chicago, Burlington & Quincy, the Wisconsin Central, the Chicago, Rock Island & Pacific, and the Chicago Great Western railroads. These lines penetrate much of the interstate territory which the complainant desires to reach over the lines of the St. Paul. But it seems definitely to appear on the record that in actual experience the through routes over those lines do not bring to the complainant any substantial coal trade. The general explanation made is that at such points in the territory in question as are served by one or more of these lines and also by the St. Paul the important coal-consuming industries are usually located on the tracks of the St. Paul; that although at nearly all those points the several roads have reciprocal switching

arrangements and coal reaching them by some line other than the St. Paul may be switched to industries on the tracks of that company, nevertheless, for some reason such industries prefer to get their coal from mines directly served by the St. Paul. That there is substance in this claim was apparently conceded on the argument. At any rate the record definitely shows that while through routes and joint rates were in force over the lines of the principal defendant this complainant was able to sell a substantial volume of coal to the interstate territory in question. Now that those through routes and joint rates have been canceled the greater part of this trade has been lost, and it is stated that the mines of the complainant are idle for a large part of the time. It is insisted that it can not successfully continue its operations in the absence of through routes and joint rates over the lines of the St. Paul, as prayed in the petition.

It is also alleged that the element of discrimination exists in the case. Every mine in the Wilmington field, if not every mine in the Third Vein field, now enjoys through routes and joint rates to the points which this complainant desires to reach. Apparently the mines of the complainant at Cardiff are the only mines in the district to which through routes and joint rates have not been accorded by the principal defendant. While denying to the complainant such an outlet from its mines at Cardiff, the St. Paul maintains through routes and joint rates to the same points from the Wilmington mines. These mines are on the line of the Elgin, Joliet & Eastern Railroad Company, and through its junction with the St. Paul at Spaulding they are able to reach the entire interstate territory heretofore described.

In its answer the defendant, the Chicago, Indiana & Southern Railroad Company, indicates its willingness to establish the through routes and joint rates demanded and alleges that it has a supply of cars available for loading coal from complainant's mine to the interstate points in question. It also avers its willingness to accept the same division of rates, whatever it may prove to be, that the St. Paul now allows to other roads with which it has established through routes and joint rates from the Wilmington field.

But the principal defendant resists the application on three grounds, substantially as follows:

1. That it amply serves, from mines on its own line, all the needs of the various coal-consuming communities at the points in question. At Seatonville are extensive mines with a large daily output of coal which, as this defendant claims, is sufficient to supply the needs of all points on its line; it can haul the coal to such points without sharing the revenue from the traffic with any other line.

2. That the opening up of through routes to those points from Cardiff with the same rates that are accorded to Seatonville, Wilmington,

and other mining points in the northern group of mines—and this is what the complainant demands—would not only enable the complainant's coal to displace the Seatonville coal in those markets, but would materially diminish the revenues of the St. Paul, because of the share of the through rate that it would have to allow to the Chicago, Indiana & Southern Railroad for its portion of the haul.

8. That the Commission has no power to establish through routes and joint rates except, to use the language of the statute, "when that may be necessary to give effect to any provision of this act;" and then only when no reasonable or satisfactory through route exists, which the defendant asserts is not the case here.

The first two of these objections really present but one question of law and they may therefore be considered together. May an interstate carrier, in order to build up enterprises of the same character on its own line and to prevent the trade of its local industries from being displaced by the competition of manufacturers of the same commodities on connecting lines, deny to industries on the lines of such connections the benefit of through routes and joint rates? May a carrier refuse such through routes and joint rates on the ground also that when the demand for a given commodity at distant points on its line is supplied by its own local industries it receives all the transportation revenue, and when supplied under equal rates by factories on the lines of its connections it must share the rate with the connecting lines and thus suffer a material reduction in revenue?

Under the common law, as has often been said, the establishment by connecting carriers of through routes and joint rates was fundamentally a matter of contract. Railroads could not be compelled to carry traffic beyond their own rails; they could not be compelled to deliver shipments at points on the lines of connecting roads. But the act to regulate commerce as amended effects a change in the law in that respect. While the greater part of the traffic of the country is carried on through routes voluntarily established by the connecting lines, the law nevertheless confers upon the Commission authority to require carriers to establish such through routes when they have failed or refused voluntarily to do so, and when there is no reasonable or satisfactory through route already in existence. The provision in question is found in section 15 of the act and is as follows:

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

In connection with that provision the language of section 1 must not be overlooked. Carriers are there required "to establish through routes and just and reasonable rates applicable thereto." The meaning of this latter provision was not discussed on the argument, nor has it had consideration in connection with any other complaint before us. Standing alone, it would seem to impose upon carriers an obligation, general in character and universal in application, to establish through routes and joint rates between all points. But if the provision be read in connection with the language of section 15, above quoted, we are left with the impression that it is simply the declaration of a general principle, the observance of which may be compelled, under section 15, by order of the Commission—not in all cases, but only in the particular cases specified in the latter section. It will there be noted that the authority of the Commission to require the establishment of through routes and joint rates is not unlimited. It can not grant relief when a reasonable or satisfactory through route between the points in question already exists. This limitation has been considered by the Commission in contested cases. *Enterprise Transportation Co. v. Pennsylvania R. R. Co., et al.*, 12 I. C. C. Rep., 326; *Chicago and Milwaukee Electric Ry. Co. v. Illinois Central R. R. Co.*, 13 I. C. C. Rep., 20.

But is the power subject to the limitations implied in the first two objections made by the principal defendant as above noted? If a railroad is a public highway and Congress may lawfully authorize the Commission to establish through routes over it in connection with another railroad, when both are engaged in interstate transportation, and thus open the two roads to shippers as a through highway for the transportation of their merchandise, ought the Commission to refuse to open it to one merchant because another merchant farther along on the highway is able to supply the demand at distant points for the commodity in question? Ought the Commission to decline to enter an order to open such a through highway because one of the carriers, without endeavoring to show that its total revenues will be unduly diminished, does show that its revenue on that particular traffic will be materially reduced? We find no such limitations in the clause in question. Nor are such limitations consistent with the duty that carriers owe to the shipping public. Being public highways, one merchant has as much right as another to move his goods over it. And it is no answer to his demand to say that the commodity in which he deals can be supplied, in sufficient quantity to meet all demands, by a merchant elsewhere on the highway. The right of one merchant to enter a distant market and compete with other merchants is a definite right which can not be denied him on the ground that other merchants can supply all de-

mands for that commodity. Nor is the fact that the revenues of the carrier may be reduced in the manner suggested by counsel a material consideration. It may be laid down as a general rule admitting of no qualification that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the service has the right to have it moved and to have reasonable rates established for the movement, regardless of the fact that the revenues of the carrier may be reduced by reason of his competition with other shippers in the distant markets; and under all ordinary conditions he has the right also to have the benefit of through routes and reasonable joint rates to such distant markets if no "reasonable or satisfactory" through routes already exist.

It is also contended by counsel for the defendant, the Chicago, Milwaukee & St. Paul Railway Company, that other limitations attach to the power of the Commission to act under section 15. It is urged that the Commission can not order the establishment of through routes and joint rates except, to use the language of the statute, "when that may be necessary to give effect to any provision of this act," or as counsel puts it, except when the refusal of a carrier to establish through routes and joint rates, when requested, violates some provision of the law. In the argument of this case nothing was said by counsel on either side to enlighten the Commission as to the meaning of that part of section 15, or to aid us in putting a construction upon it. Its correct interpretation is not free from difficulties. Neither the reports of the committees of Congress, by which the amendatory act was formulated, nor the debates on the floor of either House give any indication of the force and effect of that clause as it was understood in committee or by those who participated in the debates. And we do not desire to be understood by anything here said as stating any final conclusions as to its meaning. But one of the issues made by the complainant is that its mines at Cardiff are subjected to an unlawful discrimination by the refusal of the principal defendant to give the complainant the benefit of the through routes and joint rates which it demands, while maintaining through routes and joint rates in connection with the Elgin, Joliet & Eastern to all the points in question from the mines in the Wilmington field, a few miles north of Cardiff. As the coal from the Wilmington mines is of the same quality as that mined at Cardiff, and as both coals can find their only substantial market in the interstate territory herein under consideration, the St. Paul's refusal to establish through routes and joint rates from the Cardiff mines is an unlawful discrimination against the complainant, which is neither excused nor justified by the fact that the Elgin, Joliet & Eastern, otherwise known as the Outer Belt Line, constantly has empty cars to

interchange with the principal defendant, which the latter can make available for moving the Wilmington coal to all points on its lines. While this may be true, the giving of through routes and joint rates to the Wilmington mines results in an unlawful discrimination against the Cardiff mines. And giving to the words now under consideration their usual and ordinary significance, their literal effect is fully met by the fact that the only way in which the Commission can relieve the discrimination is by ordering the principal defendant to establish like through routes to points on its lines from the complainant's mines at Cardiff, and by making the same joint rates applicable thereto that now apply from the Wilmington mines. In this way effect will be given to those provisions in the law that forbid discriminations.

One further point is made on behalf of the defendant that must not be overlooked. It is said that an order requiring the St. Paul to join with the Chicago, Indiana & Southern Railroad in establishing through routes and joint rates to the points in question would be in violation of that part of section 3 of the act which provides that no carrier shall be required to give the use of its tracks and terminal facilities to another carrier engaged in like business. Without some such provision in the law or some such general understanding of the essential injustice involved, adventurous capital would not be slow in paralleling the great trunk lines and in demanding a connection that would give them the use of the trunk-line terminals. But the clause in question has no application to such a state of facts as this record presents. Neither the Chicago, Indiana & Southern nor the Wabash is a competing line with the St. Paul in the territory in question; they are simply connecting lines. And one of them is a necessary link in the through routes demanded by the complainant to the territory in question. But from no point of view can it be said that this proceeding is an effort on the part of either of those lines to acquire the use of the terminal facilities of the St. Paul. It is simply an effort on the part of the complainant to reach those interstate points with its coal. And as we understand the matter the terminals of railroad companies are constructed for no other purpose than to serve shippers, and shippers ordinarily have the right to use them for all legitimate purposes.

Having considered the several special objections urged by counsel for the principal defendant, there remains to consider whether or not any reasonable or satisfactory through routes now exist between the Cardiff mines and the interstate points on the lines of that defendant. That question may be easily disposed of. It is not pretended that any through routes do exist to strictly local points on the St. Paul. And it can not be urged, either with force or with logic, that the through

routes to other points on the line of the principal defendant that now exist via the other roads hereinbefore mentioned are either "reasonable" or "satisfactory" when, as the result of actual experience, they yield to the complainant, in some cases, no part, and, in other cases, only a small part of the trade that it enjoyed during the brief period when the complainant was able to reach such points over the through routes and upon the joint rates which were in effect upon the St. Paul. Assuming, as we do, the good faith of the complainant in the showing made that this result was due to the cancellation of those through routes and joint rates and not to other causes, we regard it as demonstrated on the record that the through routes over the other lines referred to are not reasonable or satisfactory. At Sioux Falls the complainant, during the period while through routes were in effect over the St. Paul, disposed of coal at the rate of 3,000 or 4,000 tons a year. Little, if any, of this business is now left to it. When recently requested to quote a price on 5,000 tons of coal destined to that point it was unable to do so because of the absence of joint rates. During the period in question it disposed of from 10,000 to 12,000 tons annually at La Crosse, Wis., and largely to industries on the terminal tracks of the St. Paul. Since the cancellation of the through routes its trade there has been cut in half. At this point, it is stated that the St. Paul refuses to switch coal cars to its team tracks when they come from other lines. Several other points are mentioned in the record, such as Lansing and Muscatine, Iowa, where similar results have followed the cancellation by the defendant of its through routes. All things considered, it is clear that the complainant should again be accorded through routes, and the same joint rates that are now in effect from the Wilmington mines, to all strictly local points on the line of the defendant, the Chicago, Milwaukee & St. Paul Railway Company, and to all points, including those specially mentioned herein, where the principal coal-consuming industries are located on the tracks of that company, and where the coal trade enjoyed by the complainant while the through routes and joint rates were in effect over the St. Paul has been substantially curtailed or altogether lost since the through routes and joint rates formerly in effect were canceled.

We shall not endeavor now to specify these points in detail, but shall leave it to the good sense of counsel to arrive at a proper adjustment of the matter along the lines here indicated, and to advise the Commission promptly of the results of their conferences. It will be observed that the complainant asks for the establishment of through routes and joint rates over the St. Paul in connection both with the Wabash Railroad and the Chicago, Indiana & Southern Railroad. If reasonable and satisfactory through routes existed to

the points in question over one of those connecting lines, it would not be competent for the complainant to ask for the establishment of through routes to the same points over the other connecting line; for the law does not authorize the Commission to order a through route when a reasonable or satisfactory through route already exists. Such being the law, we do not regard it as competent, when there are no reasonable or satisfactory through routes already in existence, for a shipper to ask for the establishment of such routes over two connecting lines, unless special circumstances of compelling force are shown in justification of such a demand. No such conditions appear in this proceeding and no order will therefore be entered at this time; but in advising the Commission of the points to which the complainant is entitled to through routes, in accordance with the views here expressed, the Commission shall also desire to be advised over which of the two connecting lines mentioned in the petition the through routes are to be established. In case the parties themselves can arrive at no definite conclusions as to these details, or as to the division of the joint rates, the Commission, upon the application of either party, will further consider the matter and enter such order as may seem appropriate.

No. 1039.

CARDIFF COAL COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY; WABASH RAILROAD COMPANY, AND CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY.

Submitted January 27, 1908. Decided April 6, 1908.

This case involves a state of facts substantially similar to that presented in *Cardiff Coal Co. v. C. M. & St. P. Ry. Co. et al., supra*, and complainant is entitled to an order establishing through routes and joint rates to all strictly local points on the line of the principal defendant to which no through routes now exist from Cardiff.

George C. Mastin, John J. Sherlock, and Frank Crozier for complainant.

Samuel A. Lynde for Chicago & Northwestern Railway Company.

Edward T. Glennon, Robert J. Cary, Bertrand Walker, and Herbert D. Howe for Chicago, Indiana & Southern Railroad Company.

REPORT OF THE COMMISSIONER.

HARLAN, *Commissioner*:

The purpose of this proceeding is to secure an order requiring the principal defendant, the Chicago & Northwestern Railway Company, to join with its co-defendant, the Chicago, Indiana & Southern Railroad Company, in establishing through routes from the complainant's mines at Cardiff, Ill., to all points on the line of the defendant, the Chicago & Northwestern Railway Company, in the states of Michigan, Wisconsin, Iowa, Minnesota, South Dakota, and Nebraska; and also to require those two companies to establish the same joint through rates for such through routes as are now in effect to the points in question from other mines in Illinois in the immediate vicinity of Cardiff. The case involves a state of facts substantially similar to that presented in *Cardiff Coal Co. v. C. M. & St. P. Ry. Co. et al., supra*, and was orally argued at the same time on behalf of the complainant, the defendants not being specially represented. A brief was also filed by the complainant.

13 I. C. C. Rep.

As this case differs in no material aspect from the case above mentioned and presents no new questions of law, it will suffice to say that the complainant is entitled to an order herein establishing through routes and joint rates to all strictly local points on the line of the principal defendant to which no through routes now exist from Cardiff. The record does not present sufficient facts to enable us to say that existing through routes and joint rates to competitive points reached by the principal defendant are not satisfactory or reasonable. As to such competitive points no order will be entered at this time. The Commission assumes, however, that the parties to the proceeding will have no difficulty in reaching an agreement that will give effect herein to the general principles announced in the other case. We shall therefore look to counsel to work out proper results and advise the Commission in due time of the action taken. In case of the failure of the parties to agree, the matter will have further consideration by the Commission upon the application of either party, and an appropriate order will then be entered.

13 I. C. C. Rep.

No. 1312.

CHANDLER COTTON OIL COMPANY
v.
FORT SMITH & WESTERN RAILROAD COMPANY.

Decided April 18, 1908.

1. In all controversies before the Commission if there is lack of jurisdiction, either from the absence of essential facts or through want of power in the statute, it is the duty of the Commission, on its own motion, to deny jurisdiction.
2. The provision of the act to regulate commerce applying to carriers transporting property "from one place in a territory to another place in the same territory," so far as it related to the territory of Oklahoma, expired by its own force on November 16, 1907, when Oklahoma was admitted as a state. Complaint dismissed for want of jurisdiction.

Flynn & Ames for complainant.

W. E. Crane for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant corporation operates a cotton-oil mill at Chandler, in the state of Oklahoma, and defendant operates a railroad between Guthrie, Okla., and Fort Smith, Ark.

It appears from the pleadings that between the dates of November 1, 1906, and April 1, 1907, complainant made numerous shipments of cotton seed over defendant's line from Prague, Okla., to Warwick, Okla., at the rate therein stated, which complainant alleges is unjust and unreasonable, and it asks reparation for the excess paid above what may be found to be a just and reasonable rate.

At the time of the filing of the complaint, on October 21, 1907, and at the time the shipments moved, Oklahoma was a territory, and the transportation was between points wholly within that territory, but on November 16, 1907, in conformity with the provision of the enabling act of Congress, Oklahoma was formally admitted into the Union by the proclamation of the President.

This complaint has not been heard, and the jurisdictional question has not been raised by the parties, but the Commission is a statutory

tribunal with limited powers, and can exercise only the powers conferred in the statute. In all controversies before it if there is lack of jurisdiction, whether from absence of essential facts or through want of power in the statute, it is the duty of the Commission, of its own motion, to deny jurisdiction. This question it is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties. This rule applies to all tribunals of limited power. *Mansfield, Coldwater & Lake Michigan Railway Company v. Swan*, 111 U. S., 382.

The provision of the amended act to regulate commerce applying to carriers engaged in the transportation of property "from one place in a territory to another place in the same territory," so far as the territory of Oklahoma is concerned, expired by its own force on November 16, 1907, when Oklahoma was admitted as a state, and the prohibition against intrastate regulation immediately became operative, leaving no power in the Commission to hear this complaint, or to grant any remedy thereunder. This case is controlled by the decision in *Hussey v. Chicago, Rock Island & Pacific Railway Company*, 13 I. C. C. Rep., 366. It follows that the complaint herein should be dismissed without further proceedings, and an order will be entered accordingly.

13 I. C. C. Rep.

No. 1028.

GEORGE J. KINDEL

v.

ADAMS EXPRESS COMPANY; WELLS, FARGO & COMPANY EXPRESS; UNITED STATES EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND AMERICAN EXPRESS COMPANY.

Submitted March 14, 1908. Decided April 14, 1908.

1. The rates made by express companies upon small packages in competition with the United States mail are not to be taken as standards by which to determine the reasonableness of their rates upon larger packages.
2. In making express rates a base rate of so much per 100 pounds is fixed and to that is applied what is termed a "graduate" scale, which gives the rates upon smaller packages for a given base rate. All the defendants use the same scale, which was attacked by the complainant as "illogical and inconsistent." The only objection pointed out was that rates upon small packages did not correspond with those upon larger ones, which is due to competition with the mail in carrying small packages; *Held*, That the scale must be assumed to be a reasonable one in this proceeding and that the only inquiry as to the reasonableness of rates involved would be directed to the reasonableness of the base rate.
3. The fact that express rates in and out of a particular business locality are higher than those in and out of a competing locality from a common source of supply is not of the same importance as in case of freight rates, since the wholesaler ordinarily brings his merchandise in by freight and also distributes it by freight.
4. Within certain limits express rates and freight rates compete and to that extent express rates should be established with reference to freight rates.
5. The main object of an express service is expedition and express rates should not be so low as to attract business which might properly go by freight and thereby congest and interfere with the service by express.
6. In determining the reasonableness of express rates but little reference can be had to the value of the property employed, since the connection between the value of the service and the cost of the property employed in rendering it is but slight.
7. This is equally true of the capitalization of the defendants in this proceeding, which bears no relation whatever to the actual investment necessary to the conduct of the business.
8. In determining whether the present charges of the defendants are reasonable, inquiry must be had into the character of the business, the amount of capital required for its conduct, the hazard involved, and, especially, the profits which these companies are now making under the rates attacked.

9. Since this record presents no reliable information as to the results of the operations of these defendants under existing rates, no opinion is expressed as to the reasonableness of their rates in general. The inquiry is confined to rates in territory west of the Missouri River to and from Denver.
10. A comparison of express rates in one locality with those in another is of much greater value than a similar comparison between freight rates, since the character of the business and the conditions under which it is transacted are more nearly the same.
11. The base rates of \$4 per 100 pounds from Omaha to Denver and of \$4.25 per 100 pounds from Denver to Ogden are excessive and should not exceed \$3.50 and \$4, respectively.
12. Rates from eastern destinations to Denver are constructed by adding together rates to the Missouri River and from the Missouri River and applying to the resulting base rate the graduate scale. The rate upon small packages thus obtained is much less than the sum of the locals upon the same package to and from the Missouri River and somewhat less up to 50 pounds in weight. The great majority of packages handled are under 50 pounds; *Held*. That this method of constructing through rates was not unlawful, for while the rate upon packages weighing 50 pounds and over would be somewhat high, the total result was reasonable.
13. The practice of making rates from or to an exclusive office by combination of the full local rates through some junction point seems to be objectionable, but since there is no evidence in this case from which the effect of an order requiring the establishment of a through base rate and the application of the graduate scale to that rate can be determined, the Commission declines to interfere at this time with the present practice.
14. The fact that under the postal regulations of England a package can be sent from London to Denver for 50 cents is no reason for pronouncing an express rate of 70 cents upon a package of the same size from Denver to London unreasonable.

A. L. Vogl for complainant.

Cravath, Henderson & De Gersdorff for Adams Express Company.
Alexander & Green and *C. W. Stockton* for Wells, Fargo & Company Express.

O'Brien, Boardman & Platt for United States Express Company.

Carter, Ledyard & Milburn for American Express Company.

REPORT OF THE COMMISSION

PROUTY, Commissioner:

This complaint is against the Adams Express Company, the American Express Company, the Wells Fargo & Company Express, the United States Express Company, and the Pacific Express Company. Of the five defendants, all but the American have offices in Denver and are engaged in transporting express matter between various points without the state of Colorado and Denver. The American company has no office in Denver and is not engaged in any considerable degree in the express business west of the Missouri River, but it is indirectly interested in this proceeding for the reason that it participates in certain rates from eastern destinations to Denver.

The complainant is a manufacturer and dealer in mattresses, spring beds, and articles of that character, who is located and doing business at Denver, Colo., and who has occasion to transport, to some extent, the various commodities embraced in his business by express to and from points outside the state of Colorado. He and his family are residents of Denver and have the same interest as other residents in the express rates imposed upon that community.

The complaint, which is very comprehensive, embraces in addition to one or two minor matters the following issues:

1. It is alleged that rates per 100 pounds from various eastern points, like New York, St. Louis, and Omaha, to Denver, are unreasonable, and that the same is true of rates between Denver and western points, like San Francisco, Salt Lake City, and other points in Utah.

2. Rates from eastern points to Denver are made by combination upon the Missouri River and perhaps upon certain other jobbing centers, while the rate through Denver to points west is usually lower than the sum of the locals to and from Denver. This is alleged to be a discrimination against Denver.

3. The complaint attacks what is known as the "graduate" scale of the defendants.

For convenience the last of these points may be referred to first.

THE GRADUATE SCALE.

Most express matter is moved upon what is termed a merchandise rate, and it should be noted that in this entire report only the general merchandise rates of the defendants are considered. For the purpose of determining the rate applicable to packages of different sizes what is known as a "graduate" scale is employed, this being a tabulation showing the rate applicable to a package of a given size between two points when the base rate or the rate per 100 pounds is known. The complainant insists that this graduate scale is unscientific and inconsistent, and that the rates produced by its application are unreasonable and discriminative.

An examination of this scale shows that rates upon small packages do not increase with distance to the same extent that rates upon larger packages do. The base rate used for determining the rate on small packages from New York to San Francisco is \$14. Now, we find upon examination of this graduate scale that the charge for carrying a 1-pound package between two points where the base rate is 50 cents per 100 pounds is 25 cents, while the rate for carrying a 1-pound package from New York to San Francisco is but 30 cents. The rate upon a 20-pound package between the points where the 50-cent base rate applies is 30 cents, while the charge for transporting a 20-pound package from New York to San Francisco is \$2.85. The complainant urges that if the increase in charge for

handling the small package the longer distance is just and reasonable, then the increase in case of the larger package is utterly exorbitant, and that Denver in paying, as it does, these long-distance charges from eastern points of origin is subjected to excessive rates.

Packages of merchandise weighing not to exceed 4 pounds can be sent by mail at 1 cent per ounce, and the package can be registered for an additional 8 cents, making the cost of transporting 1 pound between any two points in the United States and insuring the safe delivery of the package 24 cents. The defendants stated that these rates on small packages were made in competition with the United States mail, and that since distance was disregarded in postage rates, they were obliged to practically disregard distance in establishing their own charges for the handling of business in competition with the post-office. The mail is only available up to 4 pounds in weight, but the defendants, as a matter of policy, extend their competitive rates to packages of 7 pounds.

Since these rates upon small packages are made under these competitive conditions they ought not to be taken as the test of a reasonable rate upon larger packages to which the competition does not apply, just as this Commission has often said, following the holdings of the Supreme Court of the United States, that a freight rate forced by competition can not be made the measure of a reasonable rate where the competition does not apply. It is possible that circumstances might arise in which the application of these charges between competitors might work a discrimination which would be undue notwithstanding the competitive situation, but nothing of that kind is suggested in the record before us.

It was intimated by the defendants themselves that the transportation of these small packages at the low rates in effect was a losing proposition, and following the rule laid down by the Supreme Court as to the meeting of a competitive rate, these express companies would have no right to do their small-package business at a loss for which they must recoup themselves by an excessive charge upon the larger-package service; but this case does not show nor is it probably the fact that these small packages, which are carried long distances for low rates, are handled at an actual loss. On the whole we see no reason to condemn this practice of the defendants, nor to hold that the small-package rates which they make for these competitive reasons should be taken as the measure of the rates which they apply to other packages with respect to which the competition does not exist. The complainant pointed out that in some instances two small packages making up a given weight could be shipped for less than a single larger package of that weight; but this, of course, results from the conditions already alluded to.

The above inconsistency in the rates applied to small and large packages for long and short distances was the only specific fault found by the complainant with the graduate scale. Since that objection is not well taken and since none other is pointed out we must assume, in this proceeding, that this graduate scale is reasonable; that is to say, that if the rate per 100 pounds is just, the resulting rate upon small packages produced by the application of this scale is just. While, however, this is assumed in the present case it must be noted that the only respect in which the graduate scale has been examined or is approved is as above stated.

COMBINATION OF LOCALS AGAINST DENVER.

The second ground of complaint is that the combination upon Denver is greater than the through rate, while the combination upon the Missouri River and points farther east equals the through rate. For example, the rate from New York to Omaha is \$4.50, from Omaha to Ogden \$6, making a through rate of \$10.50, while the rate from New York to Denver is \$8.50, from Denver to Ogden \$4.25, making a through rate via Denver of \$12.75. This, the complainant alleges, gives to the merchant at Omaha an advantage over the merchant at Denver of \$2.25 in the express rate. This ground of complaint has been urged with great variety of illustration and with much earnestness.

It is undoubtedly true that an adjustment of freight rates like that above complained of may result in serious discrimination against a particular locality and that it does result in such discrimination against Denver. While, in theory, the same discrimination exists in the express rate as in the freight rate, the practical consequence of that discrimination is not the same for the reason that the wholesaler does not ship his merchandise in and out by express. Almost without exception the shipment in is by freight; generally, the shipment out is also by freight. The express service is only resorted to in very unusual cases for the inbound shipment and only occasionally in distribution. The testimony in this case shows that millinery goods are to a considerable extent brought by express from New York to Denver and distributed from Denver upon the express rate. It also appears that certain kinds of photographic paper and certain other photographic supplies are shipped by express only and that, to the extent that these articles are dealt in by jobbers, the transportation both in and out is upon an express service. With these exceptions there is practically no shipping in by the jobber at Denver by express.

Millinery goods take a very high rate by freight, so that the cost of moving them by express does not very greatly exceed that by

freight. The transportation charge is small in comparison with the value of the articles transported and has therefore but little significance in the profits of an ordinary business. It is fairly inferable from the testimony that the discrimination against Denver growing out of this higher combination upon that locality is not a serious if it is an appreciable one.

The real thing in which the merchant and resident of Denver are concerned is the reasonableness of these express charges. If the defendants are imposing upon Denver unjust rates for the performance of these public services, an unjust burden is laid upon that community, which, to a degree, tells against it as a place of business and of residence.

REASONABLENESS OF DENVER RATES.

The complaint puts in issue rates from almost all sections of the United States to Denver. The evidence from which the complainant undertakes to establish the unreasonableness of Denver's express rates is by comparing those rates with others. The rate from New York to Chicago is \$2.50 for a distance of 1,000 miles; from Chicago to Omaha, \$2 for a distance of 500 miles; from Omaha to Denver, \$4 for 550 miles. Here, the complainant urges, is plain proof that the Denver rate is excessive. The same proposition has been worked out by him in very great detail in rates per ton-mile. He shows that the rates to Denver from nearly all points are higher in mills per ton-mile than to any other point. Thus, the charge from Omaha to Ogden is 120 mills, from Omaha to Denver 148 mills, from Denver to Ogden 144 mills, from Chicago to Omaha 81 mills, etc., all of which is of course but another way of comparing rates between other points with rates to Denver.

Express rates to the west of the Missouri River are nearly twice as high for corresponding distances as many of those to the east of that line. We have seen that rates from eastern points to Denver are made by combination upon the Missouri River, and that rates from all Missouri River to all Colorado common points are the same. A reduction of the rate from Omaha to Denver operates automatically to reduce the rate from all eastern destinations to all Colorado common points. In the same way, but not with the same precision, a reduction of the rate from Denver to Ogden must finally work a corresponding reduction to other points west of Colorado common points. If the evidence of the complainant shows anything it is that these western rates, not those in the East, are excessive. We shall therefore upon this branch of the case direct our inquiry toward rates from Omaha to Denver, where the base rate is \$4 per 100 pounds and from Denver to Ogden, where the rate is \$4.25 per 100 pounds. Are these base rates just and reasonable?

When a reasonable rate has been determined from Omaha to Denver there is still the further question whether the through rate from the eastern point can properly be made by adding together the locals.

Naturally, the first inquiry which presents itself is, Upon what basis shall the reasonableness of an express rate be determined? This Commission has often had occasion to consider freight and passenger charges with reference to their reasonableness, but has never before passed upon the general question as to express charges.

It is evident that many of the considerations which enter into the inquiry touching railway rates are not operative to the same extent in case of express rates. There is an immediate connection between the property which a railroad company devotes to the use of the public and the charges which it may properly impose upon the public for that service. Indeed, the Supreme Court of the United States has held that states in fixing the rates of transportation by rail must allow common carriers a fair return upon the fair value of the property employed by them in the public service. While this test can not, in most cases, be applied with practical accuracy, it is always present and is always an overshadowing consideration in the discussion of the reasonableness of railway charges.

This, in the nature of things, can not be true of express rates. The business of the express companies which fall under our jurisdiction is the collection, carriage, and delivery of small parcels by rail. The rail part of the transportation is performed by the railroad, which is usually paid for its service a given per cent of the total receipts of the express company, and the cars in which the transportation is conducted are provided by the railway. The only property which the express company devotes to this service is the personal property required for the furnishing of its offices and for the collecting, delivering, and handling of its express matter, and the total value of this property as related to the business transacted is small. The Adams Express Company reported, December 31, 1906, in round numbers, the value of its "property and effects" as \$2,300,000; the American Express Company, personal property, \$1,000,000; United States Express Company, personal property, \$600,000; Wells, Fargo & Company, July 31, 1906, \$1,600,000.

We have no reliable information as to exactly what these reports mean. Evidently the different companies have not included in this item the same things, but these figures do conclusively show that the amount of money actually invested by these express companies in the property used by them in the transaction of their business is comparatively small. It may be said that since the railway performs for the express company the service of transportation by rail

the express company should be regarded as the agent of the railway in the procuring of this business and that we should look to the value of the property used by the railway in rendering this service. Without doubt this Commission may inquire whether the sum paid by the express company to the railway company is a just and reasonable one for the service rendered, but this question, in the very nature of things, admits of no exact nor satisfactory answer, since the express service is performed upon passenger trains, is comparatively limited in extent, and is unlike any other service performed by that company unless it may be the handling of the mails.

While we may undoubtedly inquire as to the value of the property employed by these defendants in the conduct of their business, it is evident that this fact can not exercise any such controlling influence here as it does in the determination of a reasonable railway rate.

The same thing must be said of the capitalization of these companies. All these defendants are joint stock companies and not corporations; but they issue shares of stock which are dealt in like corporate stocks, and they may, for the purpose of this inquiry, be treated as corporate entities having a capital stock.

So treated, the Adams Express Company has a capital stock of \$12,000,000 and a bonded indebtedness of \$12,000,000. This bonded indebtedness is secured by a deposit of securities owned by the company. As we understand the matter, the bonds were issued to the shareholders without any consideration for the purpose of capitalizing the surplus earnings of the company. The capital stock of the American Express Company is \$18,000,000; of the Pacific Express Company, \$6,000,000; of Wells, Fargo & Company, \$8,000,000. The gross earnings of the Adams and American companies were about \$26,000,000 each for the year 1907. Here, again, there is no connection between the capitalization of these companies and the business transacted. It has been seen that the total value of property employed by these defendants in carrying on their business is but a fraction of their capital stock, and apparently there is nothing involved in the transaction of the business of any of these companies which requires back of that business a capitalization of anything like that which exists. We have no evidence as to what money was ever paid into these enterprises, but in the very nature of things this capital stock can not have represented cash originally. If so, that money must have been used for some other purpose than providing means with which to transact an express business.

We are not therefore assisted in our examination into the reasonableness of these rates by inquiring whether these defendants are earning a just return upon their capitalization. The only theory upon which

that inquiry could be pertinent would be that these defendants are public institutions whose securities have been long upon the market, where they have acquired a fixed market value. We have expressed the opinion that in case of railway companies, where there is supposed to be a connection between the value of the property and the capital account, some weight should be given to this fact; but that consideration can hardly apply to these express companies.

It is said that the express rate should be established with relation to the freight rate for the reason that these two kinds of service compete.

We have already seen that packages of merchandise weighing not to exceed 4 pounds can be transported by mail, and that express companies in competition with this post-office service make low rates for the handling of packages up to 7 pounds. Nearly all railway tariffs provide a minimum charge at which shipments by freight will be handled, which charge is seldom less than the rate per 100 pounds and often greater. It is plain therefore that small packages can be sent more cheaply by express than by freight. As the weight of the package increases, however, the express charge rapidly grows greater while the railway charge remains the same up to 100 pounds or more, so that a point is speedily reached where the cost of the movement is less by freight than by express. The express service includes, generally, the collection and delivery of the package, while the railroad receives and delivers the freight at its station. This item of expense is in favor of the express company. Hence, there is, in the matter of expense, up to a certain point, competition between transportation by freight and transportation by express, with the advantage in favor of the freight service, ordinarily, where the package is of any considerable size.

The most important item in the express service is expedition, and this often absolutely determines whether express or freight shall be selected. If the merchant can effect a sale by having a particular article at his store at a certain time, he can better afford to pay something more for the speedy transportation of that article than lose the sale. When a whole factory stands idle awaiting a pulley or a shaft, the expense of carrying that article to and from the repair shop is inconsequential in comparison with the time occupied. It often happens, therefore, that the speed at which the service can be rendered is absolutely controlling. It is evident that these two factors—expense and the importance of a quick service—are continually operating in certain cases and upon certain kinds of transportation to determine whether the service shall be by freight or by express; in other words, that within certain limits the express company and the railroad company are competitors.

As just observed, the most essential thing in the express business is expedition; indeed, the very word express stands for expedition. And this is largely the excuse for the existence of an independent express service. Whatever interferes with the promptitude of this service interferes with the service itself and decreases its value to the public. Now, both the defendants and the railway company which intervened in this proceeding insist that express rates should be so adjusted in comparison with railway rates as not to attract to the express business transportation which should properly be handled by freight, since when this is done the quality of the express service is depreciated and the operations of the railroad itself may be seriously interfered with.

It is familiar knowledge that express matter is handled upon passenger trains. Usually, both passengers and express are carried upon the same train. The car transporting the express matter must stand at the station while the packages to and from that station are taken out and put in. If such rate were made as would draw to the express service large amounts of business the operation of the passenger trains of the railway might be interfered with.

At the present time strawberries are moving from the state of Florida to New York and northern markets. Two rates are applicable to the transportation of these berries, an express rate of so much per box and a freight rate, under refrigeration, of so much per car. The express service is somewhat more desirable than the freight service, although it is found that strawberries can be moved most advantageously and most cheaply by the carload. Several carloads are shipped from a single station each day. If, now, the express rate and the freight rate were the same, it is evident that the express service from these strawberry-growing stations in Florida would be paralyzed; and that the service of the railway to the public generally might be seriously impeded.

The defendants are undoubtedly correct in saying that express rates ought not to be too low, or, more properly, that they ought not to be too low with reference to the freight rate. They ought not to attract to the express service business which can be properly handled, and more cheaply handled, by freight. When a reasonable freight rate has once been established the express rate in many instances ought, without doubt, to be fixed with some reference to it.

While, however, express and freight rates do, within certain limits, compete, there is a very wide field in which express charges may vary without unduly diverting traffic from freight to express. Railroad companies generally protect themselves against too low express rates by providing in their contracts for transportation with the express

companies that no express rate shall be lower than a certain percentage of the first class freight rate, usually $1\frac{1}{2}$ times. The testimony tends to show that rates by express per 100 pounds are generally about 3 times the first class freight rate. The first class rate from Omaha to Denver is \$1.25; the express rate \$4. Plainly, we derive but little assistance from considerations of this kind in passing upon the question before us, since this express rate could probably be reduced at least 25 per cent without unduly turning traffic from freight to express.

An express company, like a railroad company, is a common carrier. It is also a monopoly. Indeed, the express companies of this country to-day constitute a much more complete monopoly of the business which they transact than the railroads do in respect of the traffic which they handle. The Supreme Court of the United States has decided that a railroad may give to an express company the exclusive right of doing business upon its line, and these five defendants under such exclusive contracts operate upon 167,000 miles of railway, 73.51 per cent of the entire railway mileage of the United States. Their rates between competitive points are fixed by tacit if not express agreement, and there is a complete understanding as to the conditions under which business shall be received and handled. Every consideration requiring supervision of railway tariffs applies with equal force to express companies.

In passing upon an entire schedule of railway rates (and when in this proceeding we pass upon the base rate of these defendants we really consider their entire schedule) the controlling factor is the value of the property which is devoted to the public service. The cost of originally producing or of reproducing that property is an important consideration, as is also the capitalization of the company and the value of its securities. In revising the rates of these express companies those considerations can have but little weight, since there is no real relation between the value of the property and the service performed, nor in the case of these companies, between their capital stock and just earnings. The fundamental question is, however, still the same, and is, What ought these defendants to be fairly allowed for the public service which they perform? To answer this we must know the character of that business, the capital required for its conduct, the hazard involved, and especially, in passing upon present rates, the profits which these companies are making from those rates.

In the latter part of 1906 the Commission required various express companies, the defendants among others, to file with it statements showing their receipts and disbursements and giving certain other information, and all the defendants have filed these returns in a more or less complete form. Some of them have also filed statements in

this proceeding which supplement those and bring the record down to a more recent date.

As illustrative, we may select the United States Express Company. This company showed, for the year ending December 31, 1906:

Total earnings.....	\$16, 935, 157
Total expenses.....	16, 076, 994
Net income.....	858, 163

For the year ending June 30, 1907, the figures were:

Earnings from operation.....	\$17, 484, 376
Operating expenses.....	16, 969, 681
Net earnings.....	514, 695
Income from investments.....	425, 143
Total income.....	939, 838

This company filed in this case a statement of earnings and expenses for the year ending November 30, 1907, as follows:

Earnings from operation.....	\$17, 904, 863
Operating expenses.....	17, 526, 750
Income from operation.....	378, 113

The phraseology above given is that of the express company and leaves the meaning of the first table somewhat doubtful.

For the purpose of showing the general character of the operating expenses of these defendants we give below the detail as furnished this Commission by the United States Company for the year ending June 30, 1907:

Account.	Amount.	Per cent of gross earnings.
Transportation.....	\$8, 063, 141	46. 12
Expense.....	348, 019	1. 99
General expenses.....	172, 337	. 99
Salaries.....	3, 680, 803	21. 05
Commission.....	1, 077, 393	6. 16
General salaries.....	1, 844, 269	7. 68
Rents.....	385, 144	2. 20
Stable.....	1, 105, 418	6. 67
Stationery.....	140, 134	. 80
Loss and damage.....	186, 068	1. 06
Personal property.....	294, 667	. 69
Taxes.....	96, 190	. 55
Insurance.....	16, 006	. 09
Total.....	16, 969, 681	97. 05

In "expense" is included fuel, light, telephone, and such items; in "general expenses" traveling, legal, and general line expenses not chargeable to any local office; in "salaries" the amounts paid the employees at local offices; in "general salaries" the amounts paid general officers and other employees which are not directly chargeable

to a local office, and "commission" includes those agents whose compensation is paid in the form of a commission. It will be seen that of these expenses about 50 per cent is for transportation and 35 per cent for compensation to employees, and such would be about a fair average for all the defendants.

The United States Express Company is an association with a so-called capital stock of \$10,000,000. According to its statement to the Commission it had, as of June 30, 1907:

Real estate.....	\$2,648,883
Personal estate.....	800,000
Investments.....	7,224,226
Cash.....	1,081,925
Total.....	11,555,034

Its balance sheet also showed various other assets aggregating a considerable amount.

The Adams Express Company, for the year ending December 31, 1906, showed:

Gross earnings.....	\$26,272,515
Operating expenses.....	23,768,620
Net earnings.....	2,503,895
Income from other sources.....	1,888,398
Net income.....	4,392,283

The same company filed a statement in this case showing, for the eleven months ending November 30, 1907:

Gross receipts.....	\$25,105,426
Operating expenses.....	24,639,728
Net income from operation.....	465,698

This company handled during this period 57,211,226 items, showing an average receipt per item of 43.9 cents, and an average profit of eight-tenths of 1 cent.

This company, as already stated, has a capital stock of \$12,000,000. Its total investments, as shown by its return to the Commission, are \$22,131,325.

The American Express Company shows, for the year ending December 31, 1906:

Gross earnings from operation.....	\$26,864,971
Operating expenses.....	25,768,820
Net earnings from operation.....	1,111,151
Income from other sources.....	2,091,376
Net income.....	8,202,527

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The statement of this company filed in this case showed, for the year ending June 30, 1907:

Gross earnings.....	\$29, 100, 784
Expenses.....	27, 793, 468

Net income from operation.....	1, 307, 316
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This company handled during the year 48,290,310 packages, at an average expense per package of 57.3 cents, and an average profit per package of 2.69 cents.

Its capital stock is \$18,000,000; its investments aggregate \$17,-622,741.

The Pacific Express Company, for the year ending December 31, 1906, showed:

Gross earnings from operation.....	\$7, 187, 851
Operating expenses.....	6, 604, 785

Net earnings from operation.....	583, 066
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The capital stock of this company is \$6,000,000. We have no account of its investments.

Wells, Fargo & Company makes return to the special circular of this Commission showing:

Gross earnings.....	\$18, 683, 035
Operating expenses.....	16, 138, 073

Net earnings from operation.....	2, 544, 962
Income from other sources.....	520, 000

Net income.....	3, 064, 962
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This company has filed no statement showing earnings in this case. Its capital stock is \$8,000,000, including its banking department; its other investments, according to its return to this Commission, are \$4,605,701.

It is apparent that these figures afford no satisfactory basis for the expression of an opinion as to whether these companies are or are not at the present time receiving more than reasonable returns. The statistics cover, in most cases, the operations of but a single year. So far as detailed statements of operating expenses are given, they are not constructed upon the same basis and are worthless for purposes of comparison. We have no satisfactory statement of the amount of property which is actually devoted to the conduct of this business, nor the amount of hazard which may be involved, nor the amount of capital which is required to successfully conduct the business. These facts must be known and we must also have some reliable account of the results of operation extending through more than one year before an opinion can be expressed with any confidence.

Note that according to the above statements the net earnings of the Adams Express Company shrank from over \$2,500,000 during the twelve months ending December 31, 1906, to less than \$500,000 for the eleven months ending November 30, 1907.

Apparently this business is not one which involves the possession or use of any large amount of capital. There is no similarity between the express business and the railroad business in this respect. These companies might go out of business to-day with a comparatively small property loss, while the loss to a railroad which discontinued operations would be substantially the entire investment.

The risk involved in the conduct of the business is not large. No credit is extended. There is a certain liability for loss or damage to property in transit, but this item is not excessive, as appears from the reports of the companies. The loss and damage item of the American Express Company was 1.21 per cent of its total earnings; of the Adams Express Company, 1.01 per cent; of the Pacific Express Company, 0.63 per cent; of the United States Express Company, 1.06 per cent.

It requires ability of a high order to organize, systematize, and keep in operation the business of one of these companies, but it must be remembered that before the net earnings are determined there has been deducted as part of the cost of operation the expense of providing that kind of ability. The responsible officers in control of the operations of these enterprises undoubtedly receive adequate compensation for their services. We do not feel that any extravagant return should be permitted upon the business of these companies, for it involves none of the elements which entitle an investment to a high return. A sufficient profit should be allowed, so that this important part of the transportation business of this country may be conducted in a competent and progressive manner.

The figures above given rather indicate that the net results of the express business are not as favorable to-day as they were some years ago, and the defendants all gave evidence to this effect. The cost of transportation, on the average, is fully one-half the total cost of operation, and this item does not, of course, increase unless the percentage paid to the railway company increases. It was said that in case of some contracts this had happened; that 45 per cent and 55 per cent were paid to-day where but 40 per cent and 50 per cent were paid a few years back. To what extent this may be the case we have not undertaken to determine. The item which comes next to cost of transportation is labor, and the wages paid employees have undoubtedly increased in this service, as they have everywhere else. The testimony shows that several of the defendants have within the last year increased the wages of their clerks, and perhaps their

employees generally, by 10 per cent. Such an increase would certainly have been just and consonant with the general trend of the price of labor, and an addition of 10 per cent to the salary list of any of these defendants would very materially increase the cost of operation. It is also true that the cost of maintaining their stable equipment and the cost of all other articles entering into the express business have advanced in recent years. The defendants also claimed that while the rates had not been reduced, and had in some cases been slightly advanced, the service given for the rate was more expensive. Express is carried upon more passenger trains, deliveries are more extensive, and in general the service means more to the public than it did.

All these defendant companies have investments of various kinds from which they derive a considerable income. In some instances the value of their investments exceeds that of their capital stock and the income from this source would of itself pay a dividend upon the capital stock. Nothing appears in this case as to the sources from which these investments have been derived, but it seems altogether probable that both the investments and the capital stock represent, to a large extent, the profits of these enterprises in the past. The three leading companies have been in existence for a half century, and it might well happen that in that length of time their accumulations would have been considerable. These assets can not, however, be considered in the fixing of a reasonable express rate. Even were it true that these companies had accumulated a surplus by the imposition of charges which were, when made, unjust and unreasonable, this Commission can not undertake to distribute that surplus to the public by putting into effect to-day rates which are not fairly compensatory for the present service. While we may properly have in mind the fact that rates in the past have been too high, should that appear, as bearing upon what are reasonable rates for the future, we ought not to require these defendants to perform this service for the public for a compensation which is not just and fair without reference to the assets which these companies may possess, but which are not devoted to the express business nor necessary to nor connected with the operation of that business.

The complainant contends that these express rates are too high because the amount paid the various railway companies under these percentage contracts is extravagant; and this is a proper subject for inquiry by us in passing upon the reasonableness of these rates.

In this case we have no testimony bearing upon this subject except that given by the Atchison, Topeka & Santa Fe Railway Company, which asked permission and was allowed to intervene. That company insisted by its evidence that the express business was the very

poorest which it handled. Nor can it be said that this assertion as made by that company is altogether a guess. It purports to be the result of careful computation worked out upon the following basis:

Express matter is always carried upon passenger trains. The Santa Fe Company knows the total mileage of its passenger cars or its passenger trains and the total receipts from those trains from all sources. The statistician of that company has estimated in a manner which seems to be reasonably accurate the relative amount of space upon these trains which is devoted to express matter. He computes the proportion of operating expense which ought to be charged against this amount of passenger train mileage. Taking now the total amount of receipts from express business and charging against it this proportion of passenger operating expense, he determines the net profit to his company after the payment of operating and fixed charges. His conclusion is that this net is but 10 per cent of the gross and that this is the lowest percentage of profit shown by any branch of the service.

This evidence, of course, relates only to the lines of the Atchison, Topeka & Santa Fe System. Neither the complainant nor the defendants introduced any testimony whatever upon this point. Surely, it can not be found upon this record that express rates are exorbitant, for this reason.

This subject is new, and we should proceed with caution. While this record is not conclusive, it indicates that the general level of express rates in this country at the present time is not excessive. Some of these defendants, especially Wells, Fargo & Company, show an income which may fairly be regarded as too great, but this is not true of the Adams or the American or the United States, upon the face of the figures as presented by them. We reserve, therefore, the expression of any opinion upon the general reasonableness of express rates until the Commission has information of a more satisfactory and conclusive character; such, for example, as will be furnished by the returns which express companies are now required to make to this Commission.

These rates ought not, therefore, to be reduced at this time upon the theory that the general level of express rates in this country is too high. Assuming, without deciding, that the general level of such rates is sufficiently low, ought these particular rates to be reduced? Are they unreasonably high as compared with other rates in other parts of the country?

We have seen that the rate from Chicago to Omaha, a distance of 500 miles, is \$2 per 100 pounds, while from Omaha to Denver, 550 miles, it is \$4 per 100 pounds, and from Denver to Ogden, 600 miles, \$4.25 per 100 pounds.

Both sides have furnished an exhaustive statement of rates obtaining between different points in various parts of this country, and a careful examination of those tables shows that the rate per ton mile in the section covered by this investigation is higher than that which obtains anywhere else, unless it may be in territory still farther west. What is the excuse for imposing upon this region express rates which are so far above those charged elsewhere? Why should the base rate from Omaha to Denver and from Denver to Ogden be almost twice that for corresponding distances immediately east of the Missouri River? The defendants answer that it is because the density of traffic east of the Missouri River is much greater than west.

It is probably true to some extent in the express business, as it is in the operation of a railway, that as traffic increases, other things remaining equal, the percentage of operating expense decreases. A railroad company must maintain its railroad and its stations and whatever else is necessary to the providing of a way upon which trains can be handled, irrespective, within certain limits, of the amount of business transacted upon that railroad. The expense of maintaining this structure does not increase as the amount of freight handled over it increases. To a less degree the same thing is doubtless true of express companies. The item of transportation increases exactly in proportion to the increase of receipts, for that service is paid for by a percentage of these receipts. The other expenses of an express company, up to a certain point, do not increase in proportion to the amount of business handled. An express messenger does the work upon a given train at the same price although the business may perhaps double. The same is true of a delivery wagon or an office. Until the capacity of the messenger or the office or the delivery wagon has been reached an addition to business does not increase proportionately the expense. Hence, it follows that up to a certain point the express company, like the railroad company, transacts its business cheaper in proportion as the business grows, but according to the testimony in this case and according to the plain reason of the thing a point is soon reached where there is apparently little advantage in this respect from additional business; that is to say, the profit arising from the new business is no greater than the profit arising from the same amount of old, and when this point is reached mere increase in density of traffic would be no reason for a reduction in rate.

The idea that freight rates and express rates upon lines west of the Missouri River ought to be maintained at the high figures previously in effect because traffic is light has no sufficient foundation in fact. That might have been true, and probably was true, fifteen years ago;

with respect to much of the traffic and many lines of railway it is no longer true to-day. The territory covered by the Omaha-Chicago rate is embraced in Group VI; the territory covered by the Denver-Omaha rate and similar rates is embraced in Groups VII and VIII. Now, the returns to this Commission show that express earnings in Group VI between Chicago and the Missouri River are \$157 per mile, while in Group VII they are \$137 and in Group VIII \$176, an average of \$152 per mile. It will be seen, therefore, that the average density of express traffic is almost exactly the same upon lines operating in Groups VII and VIII as it is in Group VI, although it should be noted that the percentage of earnings allowed the railroad may be somewhat greater in Groups VII and VIII than in Group VI.

These rates have been in effect twenty years. During that time every condition has changed; traffic has increased in volume; freight rates have been reduced; these express rates have remained stationary.

Wells, Fargo & Company, while it does not file any statement in this case showing its transactions as a whole, does show in detail the amount of its business between New York, Chicago, Kansas City, St. Louis, Omaha, and St. Joseph on the one hand, and Denver on the other, giving the cost of transacting this business as determined by its average at the various points named. According to this statement, the total amount of business transacted during the months of July, August, and September, 1907, was \$11,683, and the total net profit \$1,117, or substantially 10 per cent of the gross business. The defendants insist that this showing conclusively proves that the rates are reasonable. It is probable that this statement, made up as it is, ought not to receive much weight, but so far as it has any significance it does not tend to show that these rates are too low. While we do not undertake at this time to suggest what would be a reasonable net income upon the amount of business transacted by these defendant companies, we have no hesitation in saying that 10 per cent after every item of risk has been paid for, after all the administrative and business ability required to manage this business has been compensated, in view of the comparatively small value of the property invested is an extremely liberal return. Hardly any other business involving no greater outlay and no greater risk pays this return, nor would this business pay it permanently were it not in the nature of a monopoly.

Comparisons with other rates in other sections are of much more value in determining the reasonableness of express rates than in case of freight rates for the reason that here conditions are usually about the same. The packages handled are of substantially the same size and the same character and the service is practically identical, the

only substantial difference being the greater volume of the business in one part of the country than in another.

Wells, Fargo & Company operates over about 44,000 miles of railway in the United States, the greater portion of this mileage lying west of the Missouri River, and the Pacific Express Company operates mainly in that same territory. These two companies, especially Wells, Fargo & Company, show a much higher percentage of net profit than do the other defendants.

The complainant claims that certain of the defendants are transporting express matter from the Missouri River to Denver for 50 cents per 100 pounds, and that this is the strongest possible evidence that the established rate of \$4 per 100 pounds is extortionate. The circumstances out of which this claim of the complainant grows are the following:

Wells, Fargo & Company operates from Kansas City through Denver to San Francisco. Some other company, like the Adams, operates from a more easterly point, like Cincinnati, through Kansas City to Denver. The Adams Company receives express matter at Cincinnati for San Francisco, which it may deliver either at Kansas City or Denver to Wells, Fargo & Company. Wells, Fargo & Company allows the Adams Company a certain division at Kansas City, and it allows that company a division only 50 cents per 100 pounds more at Denver. The Adams Company elects to make delivery at Denver and thus earn the additional 50 cents.

Complainant urges that the fact that Wells, Fargo & Company is unwilling to make a difference of more than 50 cents per 100 pounds between the traffic when received by it at Kansas City and when received at Denver, and the fact that the Adams Company voluntarily transports the business from Kansas City to Denver for 50 cents per 100 pounds, is conclusive in his favor.

It has appeared that the express company pays the railroad one-half its gross receipts; hence it costs the Adams Company to carry this traffic from Kansas City to Denver 25 cents per 100 pounds. The expense to it of making the transfer is the same at Kansas City and at Denver. It must provide messenger service between Kansas City and Denver, but unless an additional messenger is required, this entails no extra cost. In other words, it costs the Adams Company practically the same to make delivery at Denver that it does to make its delivery at Kansas City, and it earns 25 cents per 100 pounds more.

It is this situation which enables the Adams Company to carry this traffic to Denver, and it is apparent that it affords no valid test of reasonable express rates for the transaction of general business between the Missouri River and Colorado common points.

In our opinion a base rate of \$4 per 100 pounds from Omaha to Denver is excessive and a rate of \$4.25 from Denver to Ogden is exces-

sive. We do not feel that the rate from Omaha to Denver should exceed \$3 and that from Denver to Ogden \$3.50; but it is our desire to proceed in this matter with great caution, and we shall at the present time establish the rate from Omaha to Denver at \$3.50 and from Denver to Ogden at \$4.

Still another question arises as to the reasonableness of the through rate to Denver from points east of the Missouri River. We have seen that these rates are constructed by adding together the locals. For example, the rate from Chicago to Omaha is \$2; from Omaha to Denver \$4; from Chicago to Denver \$6. Now, assuming that the rate from Chicago to Omaha is reasonable and that the rate from Omaha to Denver is reasonable, is a through rate constructed in this way reasonable?

The express service usually includes a collection and delivery of the package. The express company receives the merchandise at the store or office, transports it to the railway station, makes out the necessary billing, and places it in the car, where it is transported under charge of an express messenger. At the end of the route the article is taken out and delivered. This terminal service is of value to the shipper and a source of considerable expense to the company. It fairly appears from this testimony that these terminal expenses aggregate about 25 per cent of the entire operating expenses of all kinds, including transportation.

Now, the local rate from Chicago to Omaha involves a terminal at each end or two such services. The rate from Omaha to Denver involves two more services, so that in the two local rates there are four of these terminals transactions, while the through rate from Chicago to Denver embraces but two. It would seem to be self-evident, therefore, that if the local rates were just, the resulting through rate would be unjust.

This is the contention of the complainant, and it would be unanswerable if in point of fact the express rates between Chicago and Denver, which Denver pays, were established on this basis. They are not. As we have already seen, package rates are ascertained by applying to the base rate of so much per 100 pounds the graduate scale. Now, this graduate scale is so constructed that package rates for long distances do not increase in proportion as the base rate increases. This is best shown by a practical example. The rate on a 10-pound parcel from Chicago to Omaha is 70 cents, from Omaha to Denver \$1, making a combined rate of \$1.70; but the rate upon a 10-pound package from Chicago to Denver is \$1.15, or 55 cents less than the combination.

As the size of the package increases this difference becomes less marked. Thus, the combined rate upon a 35-pound package is \$2.70 while the through rate is \$2.50. For packages of 50 pounds and over

the combined rate and the through rate are the same. The statement of Wells, Fargo & Company, already referred to, shows the number and weight of packages handled by it between Denver and New York, Chicago, Omaha, and Kansas City during the month of July, 1907. The total number of packages was 2,697, of which 1,784 were 7 pounds and under, 806 between 7 and 50 pounds, while only 107 weighed 50 pounds and over. It will be seen therefore, that practically all the express movement consists of small packages which take a rate less and in case of the smaller packages very much less, than the combination rate. While this method of determining the rate upon packages weighing 50 pounds and over is indefensible, we are inclined to think that, as applied to the entire express movement, it does not work injustice. It seems to be a practical way of making these rates, which simplifies the ascertainment of the rates themselves and yields a reasonable through rate, if the locals constituting the base rate are just.

It will be noticed that this is due to the fact that the graduate scale is applied to the through rate. When the graduate is applied to the local rate, a much higher through rate for the small package results. In case of shipments from an exclusive office, or as we understand the matter, to an exclusive office, the graduate is applied twice; that is to say, the through rate is strictly the combination of the local rate applicable to that particular package up to the junction point and of a second local rate applicable from that junction point. The rate is not always determined by the combination of locals upon the junction point through which the traffic actually moves but is always a combination of locals through some junction point.

This is apparently upon the theory that in such case four terminal services are involved, a delivery to and a receipt by an express company being treated as equivalent to a receipt from a consignee. Evidently, this assumption is not true in fact. While the transfer of this business requires a new billing and while therefore the office work may be substantially the same in case of a transfer as in case of a delivery, the general expense is nothing like as great since these transfers are usually made in the same station and are car-to-car transactions.

The complainant insists that the rate thus produced is excessive, and there is much reason for this contention; but it is evident that the application of a different rule would work a very considerable reduction in the revenues of these companies in all parts of the country, and we ought not in this proceeding, with no more knowledge than we have of the sufficiency of the present revenues of these defendants, or of the loss of revenue which would be effected, to make any order of this kind in the premises.

As a minor matter, the complainant maintains that the express rate from Denver to London, England, is unreasonable. That rate upon a 1-pound package is 70 cents, and his ground for claiming that this charge is too high is found in the fact that this same package could be sent from London to Denver for 50 cents.

The English Government maintains a parcels post, which it extends in some cases to the United States of America. This Government does not cooperate with the English Government in an interchange of business of this kind, and the English Government employs for the distribution of these packages in the United States the services of the American Express Company. That Company, for a certain sum per package, delivers the parcel to its destination wherever that may be. Under this arrangement the American Express Company would receive the Denver package in New York and transport it to Denver for the same sum which it receives for transporting that package from New York to Elizabeth, N. J., or any other point in the immediate vicinity of New York, and the package itself could be sent from London to any point in the United States at the same rate.

There is no parcels post which operates in the reverse direction, with the result that the package must be sent from Denver to London all the way by express.

It is possible that this arrangement under which the American Express Company carries this package to Denver for the same sum which it exacts from the resident of some nearby locality might be a discrimination against the latter locality of which legitimate complaint could be made, but we feel that it does not lie in the mouth of a resident of Denver to assert that such a course of business is unlawful; nor does it appear from this record that there is any undue discrimination against which anyone could object. We are unable to find, therefore, that the transportation of the package from London to Denver for 50 cents is unlawful; nor can we find that a rate of 70 cents for the carriage of a package from Denver to London is excessive.

An order will issue requiring the defendants to establish a base rate of \$3.50 per 100 pounds from Omaha to Denver and of \$4 from Denver to Ogden, which will, of course, require corresponding reductions in other rates to maintain substantially the present adjustment.

No. 687.

IN THE MATTER OF ALLOWANCES TO ELEVATORS BY
THE UNION PACIFIC RAILROAD COMPANY.

Decided April 14, 1908.

Upon petition of the Chicago Board of Trade and others for a rehearing, the proceeding herein is reopened for further consideration.

Davis, Kellogg & Severance for Chicago Great Western Railway Company.

Gardiner Lathrop for Atchison, Topeka & Santa Fe Railway Company.

J. W. Blythe, C. J. Green, and J. E. Kelby for Chicago, Burlington & Quincy Railway Company.

J. N. Baldwin for Union Pacific Railroad Company.

Hagerman & Koon for Peavey & Company.

John H. Marble for the Commission.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

From numerous protests and complaints that have reached the Commission since the handing down of its last decision in this proceeding on April 9, 1907, it is apparent that there has been a wide extension among interstate carriers of the payment of the so-called elevator allowances on shipments of grain, and that there is a general feeling that the practice results in an unlawful discrimination. The Chicago Board of Trade and other interests largely concerned in the shipment of grain have asked for the further consideration of the matter. Under these circumstances we have concluded in the public interest to reopen the proceeding and to set it down for further argument on May 8 next in the hearing room of the Commission at Washington. Of this action the parties hereto have already been advised. It seems unnecessary to take further evidence and the matter will therefore be considered on the present record. It is the desire of the Commission that counsel shall again argue the general question of the legality of the contract of the Union Pacific Railroad Company with Peavey & Company and the lawfulness of the allowances that

are made to the latter company at Council Bluffs and Kansas City under the terms of that contract.

In connection with the reexamination of these general questions the Commission desires the benefit of the views of counsel with respect to two points which have been strongly urged upon its attention and which may be stated briefly as follows:

1. The clipping, cleaning, grading, weighing, and mixing of grain are services that have no relation to transportation, but are of commercial advantage to the shipper of the grain. If performed or paid for by a carrier at one place where it has put an elevator under contract, as with Peavy & Company at Council Bluffs and Kansas City, is it not an unlawful discrimination not to perform or to pay for similar services elsewhere on its line?

2. Wheat and other grains are dealt in upon the great grain markets of the country on fractions as small as one-eighth of one cent per bushel. A fluctuation of that amount often suffices to effect or prevent sales. And slight differences in the transportation rates are sufficient to turn a movement of grain from one market to another. In other words, no commodity that enters so largely into the commerce of the country is more sensitive than grain to fluctuations in price or rates. If therefore a shipper receives from a carrier, in connection with the transportation of his grain, any service or privilege that results in a benefit to him to the extent even of a small fraction of a cent per bushel, it gives him an advantage which can readily be turned to his profit. While some grain is taken directly to the mills, the bulk of the traffic must pass either through public or private elevators. A grain market can be maintained only by the use of elevators. A grain dealer must therefore have his grain unloaded into a public elevator and pay its storage charges, or must handle it in his own elevator and pay the cost of operation. In other words, Peavey & Company, for the successful conduct of their business as dealers in grain, must either use a public elevator or provide themselves with one of their own. In either event a substantial expense item is involved. Upon these facts it is insisted that a contract, such as the one here involved, when made with a dealer in grain who handles his own wheat, results in an unlawful discrimination, whatever may be the amount of the allowance and whether it be in excess of the cost of the service or not; for, as Peavey & Company can not conduct their business as grain buyers and dealers without using a public elevator and paying its charges, or without owning their own elevator and paying the cost of operation, any amount, be it small or large, contributed by the Union Pacific Railroad Company to the cost of running their elevator must necessarily operate, *pro tanto*, as a special concession in their favor. It is contended that any aid received by

them from the Union Pacific Railroad Company, whether sufficient to cover the cost of running the elevator or not, even though it amounts to but a small fraction of a cent per bushel, really results in giving to Peavey & Company a benefit which, although under the present tariffs of the Union Pacific Railroad Company is shared by other grain dealers in business at Council Bluffs, Omaha, and Kansas City, is nevertheless denied to grain dealers at other points on the line of that Company. Such dealers have to bear the entire burden of running their elevators, or pay for the elevation service on their grain when performed by a public elevator. And this, it is earnestly contended, is not only an unlawful discrimination against them, but against the several communities in which they conduct their grain business.

In rearguing the issues herein, counsel are requested to give some consideration to these suggestions.

13 I. C. C. Rep.

No. 926.

FRYE & BRUHN, INCORPORATED; E. H. STANTON & COMPANY; MERCHANTS' PROTECTIVE ASSOCIATION; SEATTLE RETAIL GROCERS' ASSOCIATION; H. D. REAM; D. L. TOOF, AND T. B. FOWLER

v.

NORTHERN PACIFIC RAILWAY COMPANY AND CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Submitted June 10, 1907. Decided April 14, 1908.

1. The difference in the character of testimony required to test the reasonableness of an entire schedule of rates covering the whole traffic of a particular carrier and that required to test the reasonableness of a rate on a particular commodity between two definite points considered and discussed.
2. Evidence of rebates allowed in the past when offered by a shipper who unlawfully received them is not competent to show that the published rate is unreasonable.
3. The fact that defendants accepted, and complainant actually paid, less than the published rates, in violation and in defiance of law, raises no presumption that the published rate is unreasonable, but tends rather to raise a presumption that the defendants somewhere in their rate structure exacted from shippers of other commodities rates that were unreasonably high.
4. Complaint alleges that defendants' rate of \$170 per car for the transportation of live hogs in 36-foot single-deck cars from Missouri River, St. Paul, and points intermediate, to Seattle, is unreasonable; that from branch-line stations west of the Missouri River the local rate to main-line junction is added to the \$170 rate, making an unreasonable combination through rate; and that defendants unlawfully fail and refuse to publish rates for the transportation of live hogs in double-deck cars; and damages are prayed for on account of the exaction of the alleged excessive rate on numerous shipments; on account of alleged shrinkage in weight in single-deck cars; and for alleged losses to complainant's business during two years when alleged prohibitive rates were in force. *Held*, That the \$170 rate is not shown to be unreasonable; that there is not sufficient evidence in the record to warrant a finding that the combination rate applied on shipments from branch-line stations is ex-

cessive, but it seems that the local rate on the branch line ought to be absorbed; that the record does not justify requiring defendants to furnish double-deck cars and reestablish double-deck carload rates; and that claim for reparation must be disallowed, except on certain 10 carloads shipped in 1904 under an excessive rate of \$240 per single-deck car.

S. H. Cowan for complainants.

Charles W. Bunn for Northern Pacific Railway Company

Chester M. Dawes for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This complaint relates to the carload rate on live hogs from Missouri River, St. Paul, and points intermediate, to Seattle, in the state of Washington. The petition was filed on behalf of various complainants who are interested in the rate either as shippers, buyers, dealers, packers, or traders, and who would therefore be benefited in one way or another by the reduction demanded in the petition. But the only complainant who actively participated in the hearing was Frye & Bruhn, Incorporated. This company operates a packing and slaughtering house at Seattle, and the whole record is directed to its special interest in the proceeding.

The rate challenged is a rate of \$170 on 36-foot single-deck cars established February 11, 1905, and now in force between Missouri River points and Seattle. The same rate also applies to points in the district lying about 150 to 200 miles to the west of the Missouri River, from which most of the complainant's shipments originate. The principal complainant, which for convenience is herein-after referred to simply as the complainant, alleges that the existing rate is excessive and unreasonable and demands that it be reduced to \$148.36. The original petition also complains that on shipments from stations on branch lines in the territory referred to, west of the Missouri River, the local rate to the main-line junction is added to the through rate of \$170 and results in a combination through rate which is also alleged to be unreasonable and excessive.

There is still another phase of the controversy to which some importance is attached by the complainant. The record shows that some years ago the defendants arranged to transport hogs between the points in question in what are known as double-deck cars. It established rates for movements in cars of that kind and afterwards canceled them. The complainant now demands that these rates be re-established and be made again effective, so that it may move its hogs to Seattle in double-deck cars. Finally, it must be noted that the complainant also demands damages to an amount a little in excess of \$40,000 on account of the exaction by the defendants of the al-

leged excessive rate of \$170 on 1,259 carloads of hogs that the complainant moved from Missouri River territory to Seattle during the years 1905 and 1906. On account of the alleged shrinkage in their weight, due to the close crowding of the hogs in the single-deck cars which complainant says it was compelled to use because of the failure of the defendants to provide double-deck cars, a further claim is made for \$42,652. Additional damages to the amount of \$150,000 are also claimed by the complainant for alleged losses in its business arising out of the fact that during the greater part of the years 1903 and 1904 the defendants maintained a rate of \$200 for the movement of single-deck carloads of hogs between the points in question, which rate the complainant alleges was prohibitive. As a consequence of that rate the complainant was not able, as it asserts, to move any hogs from the territory in question during that time. The result was, as is alleged, that the complainant's business did not expand and yield the profits that otherwise would have been possible. And the damages suffered in that behalf are estimated at the sum last mentioned.

In presenting their respective sides of the controversy a number of witnesses were called by the complainant and by the defendants and many exhibits of one kind or another were offered in evidence. The result is an extensive and rather voluminous record, from which we have extracted such facts as are material and essential to a proper understanding of the issues. The case may be stated as follows:

So far back as 1897 the same persons who now control the complainant company were engaged at Seattle in slaughtering, packing, and selling cattle and hogs under the firm name of Frye & Bruhn. The early history of the enterprise is not fully explained on the record, but it appears that the business expanded rapidly. In 1903 the complainant was incorporated in the state of Maine. At that time the sales had reached extensive proportions. Notwithstanding the alleged prohibitive rate in force during 1903 and 1904 and the alleged excessive rate of \$170, established on February 11, 1905, the business of the complainant shows a steady and continuous growth and prosperity. At the hearing early in the year 1907 Mr. Frye, the president of the complainant, testified that the complainant's sales approximated \$400,000 a month. It was slaughtering and dressing hogs at the rate of 70,000 annually. It was also slaughtering 40,000 head of cattle and 85,000 head of sheep a year. And it was operating thirty branch houses. Besides largely supplying the needs of the state of Washington the complainant was making extensive sales of meat products along the coast and was exporting meat in quantity to Alaska, British Columbia, Mexico, and Central America; all this being done notwithstanding the rate of \$170, of which com-

plaint is made. From a business aggregating \$1,500,000 in 1900 the complainant's sales grew to \$2,700,000 in 1903 and approximated \$4,000,000 in 1906. At the time of the hearing the indications were that complainant during the year 1907 would do a business approaching an aggregate of \$5,000,000. While these figures cover the whole of the varied output of the complainant, it seems reasonable to accept them as indicating also a steady growth in its trade in hog products. This inference is fully justified by the fact that the shipments of live hogs to the complainant at Seattle have steadily increased in number since the rate of \$170 was established on February 11, 1905.

The history of the rates in question is also an essential point in the controversy, and is necessary to an understanding of the merits of the case. The following table, prepared in the office of the Commission and filed as an exhibit by the complainant, shows the published rates in effect when the petition was filed and for the ten years previous to that date:

INTERSTATE COMMERCE COMMISSION, AUDITOR'S OFFICE,
November 1, 1905.

Statement showing rates on hogs, carload, and packing-house products, carload, from Missouri River common points to Seattle, Wash., February 5, 1887, to date, via Burlington Route in connection with the Northern Pacific Railway.

Rates to Seattle, Wash

[See explanatory notes.]

From Missouri River common points.	Hogs, in dollars and cents, per car.							Per 100 pounds.
	Note 1.	Note 2.	Note 3.	Note 4.	Note 5.	Note 6.	Note 7.	Packing-house products, carload.*
February 5, 1887.....	\$225.00	\$261.00	\$200.00	-----	-----	-----	-----	\$1.68
February 20, 1887.....	225.00	261.00	200.00	\$150.00	-----	-----	-----	1.68
March 2, 1887.....	-----	-----	-----	(^b)	-----	-----	-----	-----
June 2, 1887.....	(^b)	(^b)	200.00	-----	-----	-----	-----	1.68
August 9, 1888.....	-----	-----	-----	-----	\$136.00	\$148.37	-----	1.68
August 16, 1888.....	-----	-----	-----	-----	(^b)	(^b)	-----	-----
August 17, 1888.....	-----	-----	200.00	-----	-----	-----	-----	1.68
September 9, 1903.....	225.00	-----	140.00	-----	-----	-----	-----	1.68
October 31, 1903.....	(^b)	-----	(^b)	-----	-----	-----	-----	1.68
November 1, 1903.....	-----	-----	200.00	-----	-----	-----	-----	1.68
February 11, 1905, to date.....	-----	-----	-----	-----	-----	-----	\$170.00	1.68

* Present minimum carload weight 26,000 lbs.

^b Expired.

Note 1.—In double-deck cars, 30 feet in length, train loads of 10 or more cars.

Note 2.—In double-deck cars 36 feet in length, 116 per cent of the rate for cars 30 feet in length.

Note 3.—In single-deck cars, 30 feet in length, cars over 30 feet in length inside measurements, and not exceeding 40 feet in length, will be taken at an additional charge of 3½ per cent per foot or fraction thereof for each foot or fraction thereof in excess of 30 feet. Transcontinental Freight Bureau No. T-6, File 429, and subsequent issues.

Note 4.—Applies from South Omaha, Nebr., only, per single-deck car regardless of length, expiring March 2, 1897. (B. & M. R. R. R., I. C. C. No. 408.)

Note 5.—Single-deck cars, 33 feet, in train loads of not less than 10 cars. (B. & M. R. R. R., I. C. C. No. 701.)

Note 6.—Single-deck cars, 36 feet, in train loads of not less than 10 cars. (B. & M. R. R. R., I. C. C. No. 701.)

Note 7.—Single-deck cars 36 feet in length. Transcontinental Freight Bureau I. C. C. No. 376, Supplement 14 to S. R. 642, I. C. C. 544.

A careful examination of the above table in connection with its footnotes reveals the fact that except for a period of one week in August, 1898, when the rate between the points in question was \$148.37 for a 36-foot car, the single-deck rate on hogs from Missouri River points to Seattle has never been so low as it is at the present time. The full force of that statement must be modified by reference to a period of about seven weeks during the fall of 1903, when there was in effect a rate of \$140 on a 30-foot car, which is practically equivalent to a rate of \$170 on a 36-foot car, the actual equivalent being \$168. It further appears from the foregoing table that there was in effect for the few weeks between February 5, 1897, and June 2, 1897, a rate of \$225 for a 30-foot double-deck car. This is equivalent to a rate of \$261 on a 36-foot double-deck car. That rate expired on the date last mentioned. It was again in effect between September 9 and October 31, 1903. But except for those two short periods there have been no through rates on hogs in double-deck carloads between the Missouri River and Seattle.

The history of the published rates in effect between St. Paul and Seattle is substantially the same. From St. Paul, however, there was in effect for four years, from June 25, 1898, to July, 1902, a rate of \$136 on 33-foot single-deck cars. This rate, however, was not published by the defendants, but was in force only over the Great Northern Railway. There was in effect from St. Paul over the line of the defendant, the Northern Pacific Railway Company, a rate on 30-foot double-deck cars of \$225; this rate was in force from February 3, 1897, to July 1, 1902, and again from September 9, 1903, to October 31, 1903. The record seems to indicate, however, that, in addition to 9 carloads that moved in July, 1899, very few if any shipments were made by the complainant under that rate and over that road.

As the rate history is thus analyzed it will be seen that, except for a few brief periods, the defendants have maintained no rates during the last ten years for the transportation of hogs in double-deck carloads. It will also be observed, as to single-deck cars, that beginning with February 5, 1897, a rate of \$200 per 30-foot car was constantly maintained by defendants, except during very short intervals of time, until February 11, 1905. Practically speaking, therefore, the rate complained of, \$170 for a 36-foot single-deck car, is the lowest rate that has been in force between the points in question for any extended period in the past. This fact was pointed out by defendants upon the oral argument and apparently had not been fully realized by the complainant. Moreover, a rate of \$261 for a 36-foot double-deck

car, which, upon the face of the petition taken as a whole, as well as on the brief and upon the opening argument of counsel for the complainant, seems to be admitted to be a reasonable rate, is the exact equivalent of a rate of \$170 for a single-deck car 36 feet in length, the usual load of a double-deck car being 26,000 pounds and of a single-deck car 17,000 pounds. And if the \$261 rate for a double-deck car of that length is reasonable, it may fairly be said that its equivalent, namely, \$170 for a single-deck car, is thus demonstrated also to be reasonable. That was the contention made by the defendants on the argument. It was insisted that the complainant, having admitted in the petition and on the argument the reasonableness of the double-deck rate of \$261, had practically stated itself out of court with respect to its allegations that the equivalent of that rate, namely, \$170 for a single-deck car, was an unreasonable rate.

To meet the embarrassment arising out of that suggestion, counsel for the complainant filed a reply-brief in which it is insisted that although the \$170 rate complained of may, as stated by the defendants, be as low a rate as had been published by the defendants for many years, it was not so low a rate as had in fact and in actual practice been accorded to the complainant. In other words, the complainant frankly asserts that during a number of years it had received rebates from these defendants on its hog shipments and did not in fact pay the published rates. The rebates were allowed by the defendants, not in money but, as explained by the complainant, by giving it a 33-foot car while assessing the freight charges on the basis of a 30-foot car, or by giving it a 36-foot car and assessing the freight charges on the basis of a 33-foot car. And the reasonableness of the present rate, the complainant asserts, should be tested, not by the rates as published during the past ten years, but by the rates actually paid by the complainant. Giving free rein to the theory that the departure from the published rate resulted in a rate which, although unlawful, has full probative value in this controversy, counsel for the complainant contends that the present rate of \$170 is excessive and should not exceed a rate of \$148.37. The latter rate is said to have been about the average rate actually paid when the complainant was receiving rebates in the manner explained. The defendants having accorded an unlawful rate to the complainant, it is insisted that the rate so allowed and unlawfully used by the complainant should now be the yardstick by which to measure the reasonableness of the present published rate. In other words, it is claimed that the unlawful rate actually accepted by the defendants in the past must be taken as the normal rate, thus shifting to the defendants the burden of justifying the present rate of \$170, which, though less than the published rates in the past, the complainant contends should be regarded as a new and higher rate.

We can not accept that view of the matter. Rebates produce unregulated and therefore unequal results to different shippers. Unlawful acts usually create unequal conditions. In other words, aside from the general objection to accepting proof of unlawful acts as evidence in favor of the lawbreaker, there is the further objection that such evidence rarely appeals to the sense of justice or affords reliable grounds upon which to base definite conclusions. We have no assurance either that the competitors of the complainants were paid any rebates during the period here in question, or, on the other hand, that they were not paid greater rebates than those received by the complainant. In the latter case a new measure would be established for testing the reasonableness of the rate complained of, if such evidence is to be accepted at all. We do not mean to say that in no case of this kind shall we receive testimony showing the payment of rebates. Coming from a complainant who has paid the lawfully published rates, it might be entirely competent, in testing the reasonableness of such rates, to prove that others, as the result of some system of rebates, had actually been paying less rates on the same commodity. But when a shipper who has been guilty of a violation of the law in that form seeks to take advantage of his own unlawful acts and to use the unlawful results thus enjoyed by him as a test of the reasonableness of a published rate, there is at least a natural reluctance to accept such testimony, if indeed it may be considered competent in any event. Moreover, so far from raising a presumption that the rate complained of is unreasonable, the fact that the defendants accepted and the complainant actually paid lower rates in violation and in defiance of the law, rather tends to raise the presumption that the defendants, somewhere in their rate structure, exacted from the shippers of other commodities rates that were unnecessarily high, and recouped on such shipments what was lost by paying rebates to this complainant, and thus imposed upon other shippers a rate burden which this complainant should have borne but unlawfully evaded. We shall therefore discard testimony of that nature in this case. But we are unwilling on a merely technical view of the pleadings to agree that the complainant has stated itself out of court with respect to the rate complained of, as contended by the defendants. We therefore proceed to an examination of the record with a view to ascertaining what evidence it affords in support of the proposition that the \$170 rate on single-deck 36-foot cars is excessive and unreasonable as alleged.

There is a wide difference in the character of testimony required to test the reasonableness of an entire schedule of rates covering the whole traffic of a particular carrier and that required to test the reasonableness of a rate on a particular commodity between two definite points. Whether an attack upon an entire schedule of rates is well

founded or not is to be determined largely by ascertaining whether the gross amount of traffic carried on those rates affords the carrier, above its operating expenses and taxes, a reasonable return upon the fair value of its property. But whether it lies within the possibilities of some system of accounts that may be devised, and that is strongly denied by eminent writers on railway problems, certainly the present state of the science of railway accounting does not enable us upon any such basis to fix with certainty a reasonable rate upon a particular commodity between two points. And neither the complainant nor the defendants have pretended to analyze the operating expenses and taxes of the defendants with a view to assigning to the particular traffic now under consideration a definite proportion of those expenses as a factor for fixing a reasonable rate. We are left by both parties to arrive at a conclusion as to the reasonableness of the rate complained of solely, as counsel for the complainant puts it, by the exercise of our judgment, enlightened by experience and by such evidence as the parties have adduced that tends to aid us. This evidence consists almost entirely of a comparison of the rate attacked with other rates. And in making these comparisons counsel for the respective parties proceed upon different methods.

Counsel for complainant contends that where a rate is tested in that manner the comparison should be with rates on the same commodity, even though in a different direction and in widely separated parts of the country. This view he illustrates by comparing a movement of live hogs from Broken Bow, Nebr., to Seattle, a distance of 1,684 miles, with a movement of the same commodity from Broken Bow to New York City, a distance of 1,633 miles. On the former movement the rate of \$170 applies. On a movement to New York the rate is 74 cents per 100 pounds, which is equivalent to a rate of \$125.80 for a single-deck car with a minimum of 17,000 pounds. From this comparison counsel draws the inference that the rate here attacked is excessive and unlawful. The defendants insist on the other hand that the 74-cent rate to New York is a mere paper rate under which no traffic moves, and is made up of the combination of locals on Chicago. And it is doubtless true that there is no through movement of hogs to New York and that the through rate is a paper rate. But it is not improbable that some hogs are shipped from Broken Bow to Chicago. And for that haul, a distance of 727 miles, where the traffic conditions are more nearly similar to the conditions between Broken Bow and Seattle than are the conditions between Chicago and New York, the local used in the 74-cent combination is 44 cents, equivalent to \$74.80 per car of 17,000 pounds, which is at practically the same rate per ton per mile as the \$170 rate to Seattle. Other comparisons are made by the complainant of rates on hogs and cattle but

all, as heretofore stated, are on eastbound movements except one rate of \$150 on live hogs in single-deck cars from Fort Worth and points in Kansas and Oklahoma to Los Angeles and San Francisco; and this rate on November 10, 1904, was advanced to \$170, the same rate of which complaint is here made.

In discussing these comparisons of the rate in question with rates on eastbound movements, counsel analyzes at some length the conditions of traffic in the east and those prevailing in the west. He contends that the density of the traffic in the west is greater; that the trains are heavier, and the percentage of earnings to operating expenses less. To prove the correctness of these contentions the complainant has filed in the record numerous train-consist sheets, together with statements of freight tonnage and freight revenues of the defendant companies, based on reports made to the Commission. But we shall not endeavor here critically to examine these tables. Upon information that has reached the Commission in many cases and in a variety of forms, it is clear that the conditions of transportation east of the Missouri River, so far as they affect rates, differ very materially from conditions west of the river. Obviously a more forceful basis of comparison is on westbound rates on the same or related commodities and in the same or adjacent territory.

There is a natural relation between the westbound rate on live hogs and the westbound rate on their products. The two commodities are competitive, and in fixing the rate on one its relation to the rate on the other can not fairly be disregarded. An improper adjustment of that relation in this case would necessarily work to the disadvantage either of the packer on the Missouri River or the packer on the Pacific coast. As shown in the table reproduced above, the rate on packing-house products in carloads from Missouri River points to Seattle has been maintained at \$1.60 per 100 pounds for more than ten years. And as the present rate of \$170 on live hogs is less, as heretofore shown, than the rate has been during the same period, it follows that the present relation of the rates on the two commodities is more to the advantage of the complainant than it has been at any time. It is admitted in the complaint that the present rate on packing-house products is a proper rate, and that the relation between that rate and the former rate of \$261 on live hogs in double-deck cars of 36 feet in length is also properly adjusted. As before stated, the latter rate is equivalent to a rate of \$170 on single-deck cars. It follows, therefore, that the relation is a proper one with respect to the present rate of \$170 on live hogs. While the complainant objects to this inference, its force was not strongly denied on the argument. It was then contended by the complainant that even though the relation between the present

rate on hog products and the present rate on live hogs may be a proper one, this is no reason why the rate on live hogs should not be reduced if, as it contends, that rate in itself is excessive. It is urged that the rate on live hogs considered by itself is excessive and should be reduced, even though, in order that the relation between the two rates may be preserved, the reduction would result in pulling down the rate on packing-house products also. "If I were arguing the case from the standpoint of both articles of traffic," says counsel on the oral argument, "I should undertake to show that both of them are entirely too high." But no evidence was offered touching the reasonableness of the rate on packing-house products.

Further comparisons were made. Lists of rates on various representative commodities were offered in evidence both by the complainant and by the defendants. In each case the rate on live hogs is low and the rates on hog products are high as compared with the rates on the great majority of the other commodities enumerated. Each list shows that the rates on some commodities are higher and on other commodities lower than the rates on live hogs, and that is about all that is shown. In other words, we are still left to ascertain what is a proper rate on live hogs between the points in question. The most satisfactory comparison in any such controversy is with rates on the same product in the same direction. But, aside from the relation between the rate here challenged and the rates on hog products westbound, the only direct comparison of that kind disclosed by our investigations of the records of the Commission is with the rate on live hogs from these same Missouri River points to California terminals. The tariff schedules show that there is now in effect a rate of \$200 on 30-foot single-deck cars. As compared with this rate it is manifest that the rate of \$170 on 36-foot cars to Seattle, a practically equal distance, can not be said to be unreasonable or excessive.

Other elements and factors touching the rate in question and its reasonableness are discussed in the record and were referred to on the argument; but it will not be necessary to consider them in detail or to take up one by one the several contentions forcefully advanced by learned counsel in support of the complainant's theory of the case. It will suffice to say that upon a review of the whole record we are of the opinion that the complaint is not supported by the testimony, and that the rate complained of is not out of line with other rates on the same commodity in the same direction to which reference has been made. Nor is it out of line with the rates on packing-house products, the two commodities being competitive. Moreover, we are impressed by the fact that under the rate complained of live hogs have been able to move freely to the complainant at Seattle and in increasing volume. The testimony of Mr. Frye shows that during

1905, after the \$170 rate was established, his company received 345 carloads of hogs; during 1906 about 630 carloads; and the shipments before the hearing in 1907 gave promise of a large increase in the number of carloads during that year. In the absence of more definite proof we are unable to say that a rate that produces these results is an unreasonable rate. Moreover, while that rate has permitted an increase in the volume of west-bound shipments of live hogs, it has not resulted in an increase of the west-bound shipment of hog products, as might be expected were the rate on the live animal unreasonably high. Definite figures were offered by the defendants tending to show that there had been no material increase during the last five years in the shipment of hog products from Missouri River points to the North Pacific coast. It may be well to add that in reaching this conclusion as to the present rate-adjustment we have not been unmindful of the alleged shrinkage in the weight of hogs while in transit, concerning which much is said in the record; nor have we overlooked the complainant's demand for a restoration of the double-deck service and the reestablishment of a double-deck carload rate. The two questions are closely related. The usual carload weight for a single-deck car is 17,000 pounds, and for a double-deck car 26,000 pounds. The contention is that if the 26,000 pounds of live animals be distributed, 13,000 pounds to each deck of a double-deck car, there will be more room in which to feed and rest the hogs than is possible when 17,000 pounds of the live animal are loaded into a single-deck car; that the double-deck cars could go through to destination without unloading the hogs to feed and rest them; that this would result in a faster service, estimated at two days less than the single-deck service, and in a consequent diminished weight shrinkage, estimated at \$35 less per car than the shrinkage in single-deck cars; and that in view of the alleged excessive shrinkage in single-deck cars the value of the service rendered to the shipper in transporting hogs in a car of that kind is less than the value of the service rendered in transporting them in double-deck cars, and would therefore justify a less rate. This is the substance of the argument made by the complainant's counsel in discussing the question of shrinkage. But it all proceeds on the theory that double-deck cars could go through to destination, with advantage to the shipper, without unloading the hogs for feeding and resting; and also on the presumption that return loadings will always be available for double-deck cars. And on both these points we find the evidence far from convincing. While hogs are frequently carried in double-deck cars, and it is entirely practical to transport them in that way, we do not think sufficient grounds are shown of record to justify us in requiring the defendants to furnish such special equipment for so long a haul, in the absence of some assur-

ance of a return loading for such equipment. And no such assurance is to be found in the record.

It follows from what has been said that no sufficient grounds have been shown for disturbing the present rate of \$170; or for an award of damages on the 1,259 carloads of complainant's hogs that moved under that rate; or for the alleged shrinkage in the weight of the hogs that moved in single-deck cars. The record discloses, however, that during the month of August, 1904, the complainant shipped to itself at Seattle 10 carloads of hogs originating at Ansley, Aurora, Broken Bow, and Central City, Nebr., under the then published rate of \$200 for a 30-foot single-deck car. This is equivalent to a rate of \$240 for a 36-foot single-deck car, which rate, when compared with the \$170 rate for a 36-foot single-deck car made effective a few months after these shipments moved, was clearly excessive. On these 10 carloads we are of the opinion that the complainant is entitled to reparation at the rate of \$70 a car. The additional profits on the hogs which, as it is claimed, the complainant would have been able to ship during the years 1903 and 1904 had the defendants maintained a lower rate during that period, rest wholly in conjecture and speculation; and such testimony can not be accepted as a sufficient basis for an order, even if it be assumed that the authority of the Commission extends to claims of that nature. It is alleged in the petition, as heretofore pointed out, that the local rates from producing points on branch lines are added to the through rate of \$170, and thus produce an unreasonably high rate from those points; but the allegation was not discussed on the argument. We therefore refrain from passing upon it now, although we incline to the opinion that, in harmony with the established custom of making group rates for transcontinental traffic and in view of the long haul here involved, the rate from such local points to the junctions with the main line ought to be absorbed in the through rate.

An order will be entered in conformity with these conclusions.

13 I. C. C. Rep.

No. 1213.

WILLIAM MORTI

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted March 23, 1908. Decided April 13, 1908.

Rate of 34 cents per 100 pounds exacted by defendant for the transportation of cattle from Leon, Kans., to Chicago, Ill., found unreasonable to the extent of $2\frac{1}{2}$ cents per 100 pounds, and reparation in the sum of \$38.50 awarded to complainant.

T. A. Kramer and George J. Benson for complainant.

William Ellis for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The subject-matter of complaint in this case is the charge which was exacted by defendant for the transportation of seven carloads of cattle from Leon, Kans., to Chicago, Ill. The weight of the cattle was 154,000 pounds, the rate applied 34 cents per 100 pounds, and the total charge exacted for the transportation \$523.60. Complainant claims this was excessive to the extent of $2\frac{1}{2}$ cents per 100 pounds, or \$38.50, and asks an award of reparation for the latter sum.

The jurisdiction of the Commission over the parties and subject-matter of complaint is admitted, and other material allegations contained in the complaint are in substance that on November 14, 1906, complainant shipped 7 carloads of cattle over the lines of railway of defendant and its connection, the St. Louis & San Francisco Railroad Company, from Leon, Kans., to Chicago, Ill.; that said shipment passed over the line of the St. Louis & San Francisco Railroad Company from Leon to Kansas City, Mo., and over line of defendant from the latter point to Chicago; that complainant was induced by defendant's live-stock agent to route the shipment as above; that at the time of shipment there was in force from Leon to Chicago over the lines of railway of the St. Louis & San Francisco Railroad Company and the Chicago, Rock Island & Pacific Railway Company a rate of $31\frac{1}{2}$ cents per 100 pounds applicable to the transportation of cattle; that said agent assured complainant the rate of $31\frac{1}{2}$ cents would be protected by defendant if shipment was made, as above, over the St. Louis & San Francisco line and defendant's line, notwithstanding which defendant exacted for such transportation 34 cents per 100 pounds, which was made up of two local rates, namely, one

from Leon to Kansas City, another from Kansas City to Chicago. It is further alleged in the complaint that the weight of the cattle was, as above stated, 154,000 pounds; that said rate of 34 cents was excessive to the extent of $2\frac{1}{2}$ cents, and that complainant was therefore overcharged to the extent of \$38.50.

In its original answer to the complaint defendant denied that any representative of its company ever "lawfully" quoted a rate of $31\frac{1}{2}$ cents from Leon to Chicago, previous to January 9, 1907, but averred that previous to said January 9 the lawfully published tariff from Leon to Chicago was 34 cents, or the combination of locals as above via Kansas City.

Subsequently, however, defendant filed an amended answer, the first and second paragraphs of which read as follows:

Now comes the Chicago, Milwaukee & St. Paul Railway Company, by William Ellis, its attorney, and for its amended answer to the petition of the complainant in the above-entitled cause admits the facts therein alleged concerning the movement of the shipment therein set forth, and while averring that in the absence of modifying circumstances and conditions the rates provided for the transportation of cattle between Leon, Kans., and Chicago, Ill., are just and reasonable rates, it admits that on account of the existence of competitive conditions that the application of the rate of 34 cents as set forth in said complaint was in fact unreasonable and excessive, but this defendant avers that the rate of 34 cents per 100 pounds was the only rate which, at the time said shipment moved, this defendant could have lawfully charged or collected for the transportation of said freight.

That thereafter and effective January 9, 1907, we concurred in the St. Louis & San Francisco Railroad Company Tariff I. C. C. No. 3273, which is our G. F. D. No. 3428-A, which names a through rate of $31\frac{1}{2}$ cents on cattle from Leon, Kans., to Chicago, Ill.

When the amended answer was sent to the office of the Commission, for filing, it was accompanied by a stipulation signed by counsel of the parties, both complainant and defendant. The body of the stipulation reads as follows:

It is agreed by the parties hereto that the above-entitled case may be determined upon the pleadings and without hearing, the filing of briefs and presentation of argument being hereby waived by each of the parties.

At the time said shipment moved there was in effect, from Leon to Chicago, over the lines of the St. Louis & San Francisco Railroad Company and the Chicago, Rock Island & Pacific Railway Company, a rate on cattle of $31\frac{1}{2}$ cents per 100 pounds. The distance from Leon to Kansas City over the St. Louis & San Francisco line is about 265 miles, and over defendant's line from the latter point to Chicago approximately 500 miles, making a total of 765 miles. A rate of $31\frac{1}{2}$ cents would therefore afford a rate per ton per mile of about $8\frac{1}{2}$ mills.

Previous to the passage of the Hepburn Act it was the practice of carriers to insert in the schedules of rates and charges published by them notices to the effect that if rates named as applicable between certain points were greater than the rates contemporaneously applied

between the same points over other routes the lower rates would be protected regardless of such publication, and in some instances carriers protected such lower rates even where their schedules did not contain notices to that effect. However, after the passage of that act and the promulgation by this Commission of rules requiring carriers to include in their schedules all matters affecting rates of transportation and to so arrange their schedules that not more than one rate would be applicable at any time to the transportation of a particular class of traffic between certain points, the practices above referred to were discontinued.

Although rates of transportation can not be varied by wrong quotations made by railway officials, upon consideration of all the circumstances disclosed by the record, including the admission of the defendant above referred to, we are of the opinion, and find, that the rate of 34 cents per 100 pounds exacted by defendant was unreasonable to the extent it exceeded $31\frac{1}{2}$ cents, and that complainant is entitled to reparation in the sum of \$38.50, this being $2\frac{1}{2}$ cents per 100 pounds on 154,000 pounds, the weight of the shipment in question.

On January 9, 1907, defendant in connection with the St. Louis & San Francisco Railroad Company established and put in force from Leon to Chicago, and those carriers have since maintained in force over their lines of railway between said points, a rate on cattle of $31\frac{1}{2}$ cents per 100 pounds. The complaint in this case was filed on August 22, 1907. Where a reduction in a rate like that above referred to is made before complaint is filed, or after filing of complaint and answer, but before hearing, it is the practice of the Commission to issue an order requiring that the lower rate be the maximum charge applied during a definite period of time, usually two years from the date the rate is made effective. In this case, however, no such order will be made, since the rate of $31\frac{1}{2}$ cents is a joint rate and one of the parties thereto, the St. Louis & San Francisco Railroad Company, is not a party to the record.

The charge for transportation found unreasonable is the through rate from Leon to Chicago of 34 cents per 100 pounds. It will be seen that the transportation was over the line of the St. Louis & San Francisco Railroad Company from Leon to Kansas City, but the entire charge for the transportation from Leon to Chicago was exacted and collected from complainant by defendant at Chicago. We therefore consider it proper to require the defendant to pay to complainant the full amount of the reparation awarded, but this will not prevent the defendant and the St. Louis & San Francisco Railroad Company from making such arrangements between themselves as they may wish to concerning payment of said reparation.

An order in accordance with the views herein expressed will be issued.

No. 1068.

PATRICK BANNON

v.

SOUTHERN EXPRESS COMPANY.

Submitted April 9, 1908. Decided May 4, 1908.

Defendant's regulations as to contents of packages shipped under estimated weights have, in the past, been disregarded by complainant and laxly enforced by defendant, resulting in charges less than provided in tariff for actual weight shipped. Upon correction of those irregularities complaint was made that rate was unreasonable and reparation was demanded; *Held*, That the rate is not unreasonable and that where a shipper has in effect received a reduced rate on account of his own and carrier's irregularities, correction of those irregularities can not be made the basis for an award of reparation. Complaint dismissed.

Patrick Bannon for complainant in person.

R. C. Alston and *W. E. Kay* for defendant.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The complaint in this proceeding alleges that the defendant's rate on fish in sugar barrels, flour barrels, and tubs from Haines City, Fla., to St. Louis, Mo., is unjust and unreasonable in that about September 20, 1906, it was raised to 3 cents per pound, when for the ten years previous thereto the rate had been \$6 per sugar barrel, \$4.50 per flour barrel, and \$3.50 per tub. Reparation is asked in the sum of \$46.19 on account of alleged increase.

It is charged that giving shippers of ten or more packages of fish a less rate than shippers of single packages is an unjust discrimination to the latter, and that deduction of only 25 per cent from the weight of packages as an allowance for ice operates unjustly, as considerably more ice is used. In its answer defendant states that fresh fish are shipped from Florida points in barrels, the rate for which is computed on a basis of \$3 per 100 pounds, which is low considering that fish are carried on fast passenger trains. The rate on fresh fish between points involved in the complaint by ordinary freight train is \$2 per

18 I. C. C. Rep.

100 pounds, and defendant's contracts with the rail carriers provide that its charges must be at least 50 per cent higher than the rail-carriers' rates on the same commodity. It is also stated that there has been no change in the rate on fish from Haines City, Fla., to St. Louis, Mo., since November 15, 1900. There are three routes via which shipments are made. The distance is approximately 1,200 miles.

Reference is made in the answer to the fact that the subject of complaint had been before the Commission in an informal way and the statement contained in the correspondence was reiterated to the effect that the burden of the complaint as understood by the defendant is that complainant has been in the habit of putting more than 200 pounds of fish in a sugar barrel and agents of the defendant did not detect it, or, if they did detect it, did not put a stop to it.

Attached to the answer is tariff of Southern Express Company issued November 15, 1900, rate sheet No. 563, marked effective on receipt from Haines City, Fla., to various points in states named. This tariff provides rate to St. Louis, as follows:

Per sugar barrel.....	\$6.00
Per flour barrel.....	4.75
Per 100 pounds.....	3.75
Ten-barrel lots, one shipper, one consignee.....	5.75

The tariff contains provisions that:

These rates contemplate the transportation of 200 pounds of fish per sugar barrel, and 150 pounds net fish per flour barrel.

All shippers must be notified that the rates quoted will not apply on shipments containing in excess of the above named net weights of fish.

Apply the rate per 100 pounds on fish in half barrels and boxes, and when ice is used for preservation add 25 per cent to net weight, unless actual gross weight is less at time of shipment.

Hearing was had at Jacksonville, Fla., February 12, 1908.

Haines City is located on the Atlantic Coast Line Railroad in Polk County, Fla. It is 187 miles south of Jacksonville, from which point the rate to St. Louis per standard sugar barrel is \$5. The complainant is an orange grower having a grove of 25 acres. He owns a private lake in which he captures the fish he markets. The services of his family are employed in catching the fish; they are hauled to the station by his own team, which is also used in hauling ice.

The fish season is usually from September 25 to April 15. Complainant kept no record of the number of barrels shipped per year, but it is stated to have been between 50 and 60. The shipments according to the complainant were not weighed and it appears that it would be impossible for the agent of the express company to find out how many pounds of fish were contained in a barrel except by unpacking the barrel, separating the fish from the ice, and weighing them.

Complainant testified that before the Hepburn law was enacted he shipped on an average of 275 pounds net of fish in a sugar barrel and then filled the barrel with ice, making the gross weight from 375 to 400 pounds per barrel, the amount of ice depending upon the weather; that approximately the same condition existed as to flour barrels and tubs and that a flat rate of \$6, \$4.50, and \$3.75 for sugar barrel, flour barrel, and tub, respectively, was charged no matter how many pounds of fish were contained in the receptacle; that he did not know of anyone or any point getting a better rate than was given to him, and that the 10-barrel rate was open to everybody.

Shippers' statement of net weight was usually taken. The amount of ice used depended upon the locality; in some localities ice was more expensive than in others and, therefore, some shippers filled the barrel to capacity while others did not. The defendant has never limited the amount of ice. The average weight of a barrel containing 200 pounds of fish would be from 312 to 325 pounds. The route agent of the defendant testified that he had called upon the complainant and informed him that the defendant objected to his shipping more than 200 pounds of fish in a barrel; that the rate was \$6 a barrel; and such notice was given complainant three times. In 1907 said agent went to Haines City with the express purpose of notifying complainant that he must discontinue the practice of putting too much fish in his barrels, otherwise the matter would be reported to the Commission. On January 10, 1902, and at various times thereafter, circulars were issued advising that sugar barrels should contain no more than 200 pounds net fish waybilled at 250 pounds, and flour barrels 150 pounds net fish waybilled at 187 pounds.

Complainant testified that the rate on fish of 3 cents per pound shipped in sugar barrels and 1½ cents on all in excess of 200 pounds was based on the billing of the agent and letter from the general superintendent; that there had been three changes since the express companies were brought under the law; the first a rate of 3 cents, flat; the next when the route agent came to see him, after which the practice of weighing fish was commenced, and later the allowing of 50 pounds for the barrel and ice. The published tariff of defendant does not show a rate of 1½ cents per pound for all in excess of 200 pounds.

Bills of lading and expense bills of shipments of fish from Haines City since November 15, 1906, at rate of 3 cents on 200 pounds and 1½ cents on all in excess thereof were requested at the hearing, but were not furnished, by complainant. He states that he was unable to furnish the originals and that when he called for copies the agent at Haines City informed him that the records were in possession of the superintendent at Savannah. The defendant stated that copies of the billing of all shipments from Haines City to St. Louis since

the passage of the act would be forwarded, but they have not as yet been received. If the billing called for should show shipments since November 15, 1906, at the rates testified to by complainant, it would prove that shipments had moved at unlawful rates.

Complainant now submits various reports of sales from consignees at St. Louis in 1905, 1906 and 1908, which show net weight of fish in sugar barrels considerably over 200 pounds, express charges \$6 per barrel; and tubs, apparently above 175 pounds, express charges \$3.75. Some accounts of sales show express charges at the rate of \$6 plus 1½ cents for excess above 200 pounds. These exhibits were not the ones called for at the hearing. They are statements made up by one not a party to the record; are not binding on the defendant and have no probative force as evidence.

Complainant's allegation that the rate has been increased is not sustained by the evidence. The tariff containing the rates complained of has been in effect since November 15, 1900, and was filed with the Commission November 15, 1906. But it is apparent that prior to the time at which defendant was brought under the act to regulate commerce, notwithstanding notices and written instructions to its agents that the sugar-barrel rate contemplated but 200 pounds of fish, its tariff provisions relating thereto were not observed. The defendant lays stress upon the fact that earnest endeavors were made by it to have the shippers conform to its regulations in packing for shipment, but it states those regulations have been disregarded in many instances. The fact that the regulations were not complied with by the complainant resulted in his obtaining transportation of a greater weight of fish at the rate per barrel than was contemplated. The defendant contends that it is entitled to the credit of attempting to enforce the provisions of the law under which it now operates, and it appears that honest attempt has been made to bring about compliance with tariff provisions. It is manifestly impracticable to weigh the fish in every barrel in order to determine in each instance whether or not the contemplated weight, or any excess thereof, is contained in the package. The law places the same obligation upon the shipper as upon the carrier to observe lawful tariff provisions. Any willful false representation of the contents of a package on part of a shipper is prohibited by the law, denominated as a fraud, and declared to be a misdemeanor; and the shipper convicted thereof is subject to fine or imprisonment, or both, in the discretion of the court.

The tariff referred to limited the amount of ice to be shipped with fish to 25 per cent of the weight of the fish. The actual practice has been to permit 50 or 60 per cent to be used. Defendant has no tariff provision which justifies this practice, and if it is to be continued

the allowance of the larger amount of ice must be provided for in tariff.

The practice of the defendant is, when that is necessary for the preservation of fish, to re-ice in transit, charging the market price for ice at the locality where such re-icing is done; but it has no tariff provision therefor. The law requires, and the Commission has repeatedly stated, that no charge shall be made by carrier for any service except such as is provided for in a lawful tariff; and if the defendant is to continue the practice of re-icing in transit and charging the shipper therefor, it must provide for that service and charge, in a tariff applicable to the commodity so re-iced.

The railroad freight rate on fish between the points of shipment involved in this complaint is \$2 per 100 pounds. The express company's service is by fast passenger trains, each package is given especial attention, the shipments are delivered at doors of consignees, and the rate of freight is \$3 per 100 pounds.

We can not hold that the rate charged is unreasonable.

Manifestly, where a shipper has in effect received a reduced rate on account of his irregularities and those of the carrier transporting the goods, correction of those irregularities can not be made the basis for award of reparation.

The complaint will be dismissed.

18 I. C. C. Rep.

No. 1474.

BUTTERS LUMBER COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY; RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY; WASHINGTON SOUTHERN RAILWAY COMPANY; PENNSYLVANIA RAILROAD COMPANY; PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY, AND PHILADELPHIA & READING RAILWAY COMPANY.

Submitted April 18, 1908. Decided May 4, 1908.

Complainant is entitled to recover from defendants the sum of \$51.94, as reparation for unjust and unreasonable charge on specified shipments of lumber made under the rate complained of in this case.

Conrad H. Syme for complainant.

G. S. Patterson and *G. V. Massey* for Pennsylvania Railroad Company and Philadelphia, Baltimore & Washington Railroad Company.

Charles Heebner for Philadelphia & Reading Railway Company.

Ed. Baxter and *R. W. Moore* for Atlantic Coast Line Railroad Company, Richmond, Fredericksburg & Potomac Railroad Company, and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant in this case alleges that certain shipments of lumber were made from Boardman, N. C., to Pottsville, Pa., and to Schuylkill Haven, Pa., over the lines of the defendants, upon which a through rate of 25 cents per 100 pounds was collected, and that at the time these shipments moved, to wit, between January 11, 1907, and March 12, 1907, defendants had in effect local rates on lumber from Boardman to Richmond, 12 cents per 100 pounds, and from Richmond to Pottsville and Schuylkill Haven, 11 cents per 100 pounds, thus making a combination of locals on Richmond 2 cents less than the through rate.

13 I. C. C. Rep.

On hearing, defendants admitted that the shipments as alleged in the complaint had been made and that the through rate of 25 cents per 100 pounds had been charged thereon, but showed that the local rate from Boardman to Richmond was 13 cents per 100 pounds, instead of 12 cents, as alleged in complaint.

Defendants showed that it is customary to have rates from points in the south to points in Pennsylvania the same via Norfolk and Richmond and other gateways; that the local rate from Norfolk to Pottsville and Schuylkill Haven had been made 13 cents late in 1905; that attention had been called in October, 1906, to the fact that the rate from Richmond was less than that from Norfolk, and that in April, 1907, this had been corrected, thereby restoring the generally established relation of rates through these gateways, and from these gateways to points of destination involved.

It appears that no lumber originates at Richmond, and that there was no published rate on lumber from Boardman to Richmond other than the 13-cent rate. The defendants never intended that the combination on Richmond should be less than on Norfolk or that it should be less than the through rate. It seems, however, that competitors of complainant had at times used the lower combination on Richmond while it was in existence.

Neither in complaint nor on hearing did complainant allege that any of the rates in question, either as they existed at the time these shipments moved or as they were later corrected, were or are unreasonable. Complainant simply prayed for reparation in the sums charged on these shipments in excess of the combination of local rates on Richmond, Va., via which route these shipments moved.

After brief hearing, it was agreed by counsel for both sides that, confining the reasons and justification therefor entirely to the record in this case, and establishing no precedent to be followed in connection with other complaints of a similar nature, this complaint should be adjusted by entry of an order for payment to the complainant by defendants of the sum of \$51.94, which represents the difference of 1 cent per 100 pounds upon the shipments specified in complaint and admitted by defendants.

An order will be entered accordingly.

13 I. C. C. Rep.

No. 1338.

KOCH SECRET SERVICE

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted April 14, 1908. Decided May 4, 1908.

Defendant is guilty of unjust discrimination in refusing a special excursion rate to parties of 10 or more persons in the employ of complainant, presented by it for transportation between Nashville, Tenn., and Evansville, Ind., while according said rate to parties of 10 or more persons of other avocations traveling between the same points at the same time. Reparation awarded.

Alfred T. Levine for complainant.

William G. Dearing for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is a corporation chartered under the laws of the state of Tennessee and is engaged in secret service and detective business. On May 6, 1907, complainant sent a party of 16 men, all in its employ, from Nashville, Tenn., to Evansville, Ind., for whom fares were collected in the amount of \$80; on May 16, 1907, another party of 23 men from Nashville to Evansville, for whom fares were collected in the amount of \$115, and on May 21, 1907, another party of 18 from Evansville to Nashville, for whom aggregate fares were collected by the defendant amounting to \$90. All of these amounts were paid by complainant under protest and receipts signed by properly constituted agents of the Louisville & Nashville Railroad Company were issued therefor and are filed in the record. On May 21 complainant offered a party of 10 men for transportation from Evansville to Cincinnati, asking that the party rates then applicable under the tariffs to parties composed of other classes of persons, as will be hereinafter described, be accorded thereon. Defendant declined to accord said party rate, in consequence of which only 9 men were sent and 9 tickets bought, the tenth man not going on account of the refusal of defendant to accord the party rate.

The regular fare applying between Nashville and Evansville at the time these parties moved and upon the basis of which the charges as above set forth were collected was \$5 per capita. Under Louisville & Nashville Railroad Circular No. 4427, I. C. C. No. 1368, effective January 10, 1907, a rate of \$3.50 per capita was available between Nashville and Evansville during May, 1907, for—

ten (10) or more *bona fide* members of regularly organized theatrical, operatic, or concert companies, glee clubs, brass bands, baseball clubs, football, polo, or basket-ball teams, traveling together on one party ticket for the purpose of giving public entertainments.

The special excursion rates named in this circular as restricted to the several classes of persons enumerated were canceled, effective May 31, 1907, as per Louisville & Nashville Circular No. 4626, I. C. C. No. 1506, but by Louisville & Nashville Railroad Circular No. 5289, I. C. C. No. 1870, effective April 11, 1908, the party rate of \$3.50 is made available between Nashville and Evansville to 10 or more persons traveling together on one ticket, irrespective of avocation.

Under date of April 8, 1907, the Commission rendered a report *In the Matter of Party Rate Tickets*, 12 I. C. C. Rep., 95, stating its view that under the prohibition contained in section 2 of the act to regulate commerce against unjust discrimination as therein defined, party rate tickets can not be limited to particular classes of persons, but must be open to the general public. Adhering as we do to the conclusions stated in this report, we find that the defendant in failing to accord the special excursion rate to the party of 16 men presented by complainant for transportation on May 6, 1907, from Nashville to Evansville, also to the party consisting of 23 men from Nashville to Evansville, on May 16, and to the party of 18 men, Evansville to Nashville, on May 21, all of which parties moved over the Louisville and Nashville Railroad, has unjustly discriminated against complainant, for which reparation should be made in the amount of the difference between \$285, being the aggregate of the individual fares actually paid by complainant, and \$199.50, being the amount which would have been collected had the special excursion rate of \$3.50 applicable on parties of 10 or more persons of certain specified classes been accorded.

It is contended that it would have been illegal for the carrier under its tariffs in effect at the time to have charged for this transportation any other than the established individual fare of \$5 per capita. However, the publication of rates, rules, and regulations in the tariff schedules is not conclusive of their justness and reasonableness. The authority and duty of the Commission under the law to award damages in reparation of unjust discriminations forbidden by the act ex-

tend as well to such discriminations effected by the published rate schedules as to those effected by departure therefrom.

No reparation will be awarded on account of the excess above the special excursion rate paid on account of the 9 men traveling from Evansville to Cincinnati on May 21, 1907. While it is doubtless true that 10 men actually presented themselves for transportation, as alleged by complainant, it is conceded that only 9 traveled in the party, and, therefore, the terms under which the party rate was applicable were not met. The Commission can only award reparation on account of unjust discrimination which is actual and which is in fact accomplished, and not on account of unjust discrimination which might have been imminent had the transaction actually taken place.

An order will be entered awarding complainant reparation in the sum of \$85.50, with interest at 6 per cent per annum from June 1, 1907.

13 I. C. C. Rep.

No. 1476.

WHITE WATER FARMS COMPANY

v.

PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD
COMPANY.

Submitted April 8, 1908. Decided May 4, 1908.

Rate of 55 cents per ton exacted by defendant on gross weight of car and lading for transportation of stable manure from Washington, D. C., to Glenndale, Md., found unreasonable to the extent it exceeded 40 cents per ton on actual weight of shipment, and reparation in the sum of \$17.54 awarded to complainant.

S. B. Sheibley for complainant.

George Stuart Patterson for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

On or about January 16, 1908, there was shipped over defendant's line of railway from Washington, D. C., to Glenndale, Md., consigned to complainant's agent, a carload of stable manure, the actual weight of which was 74,700 pounds. For the transportation of this shipment defendant exacted a rate of 55 cents per ton on a weight of 118,100 pounds. The latter included both the weight of the manure and the car in which it was shipped. Complainant alleged that the charge so exacted was unreasonable to the extent it exceeded 40 cents per ton on the actual weight of the shipment, and asked the Commission to require defendant to establish and put in force and apply to the transportation of stable manure in future, from Washington to Glenndale, a rate not greater than 40 cents per ton, and pay to complainant by way of reparation for overcharge on the shipment in question such sum of money as the Commission might consider complainant entitled to.

After the complaint was served defendant's freight traffic manager, in a letter addressed to the secretary of the Commission, admitted that the actual weight of the shipment was only 74,700 pounds, but stated that through error charges had been assessed

upon a weight of 118,100 pounds, which included the weight of the car. He also made statements concerning the rate as follows:

Prior to September 20, 1907, the rate on manure from Washington to Glenndale, Md., would not have exceeded the rate to Bowie of 45 cents per 2,000 pounds, but on that date, in accordance with the Commission's ruling that the clause applying rates to intermediate points should be eliminated from tariffs and the specific points mentioned, a new tariff was issued which did not specify Glenndale, leaving the only rate in effect to that point 55 cents per 2,000 pounds. However, upon application of the shippers at Washington a rate of 40 cents per 2,000 pounds, with a minimum of 40,000 pounds, was issued in Tariff CO, I. C. C. 120, effective March 18, 1908, to Glenndale, Md., but at the time the shipment in question moved, January 18, 1908, the tariff rate was 55 cents per ton by reason of the point of destination not being specifically mentioned in the manure tariff then effective.

No question is made concerning the jurisdiction of the Commission over the parties or subject-matter of complaint.

Previous to the passage of the Hepburn Act it was the practice of carriers to insert in the schedules of rates and charges published by them notices to the effect that the rates named as applicable to a certain point "should not" be exceeded to an intermediate point, or that a rate to a certain point would apply at intermediate points "as a maximum." In most cases this was generally understood to mean that such rates would be applied to intermediate stations, but they were not always so applied. The statement that a rate will apply "as a maximum" plainly implies that there is or may be a lower rate. The Commission did not, as stated, rule that clauses applying rates to intermediate points should be eliminated from tariffs and the specific points be mentioned. What the Commission ruled was that indefinite and uncertain "intermediate" and "maxima" rules should be amended so as to make their application affirmative and definite, or that they should be eliminated. In other words that the rule should state plainly that the rate "will apply" at intermediate points, instead of saying that it "should not be exceeded" at intermediate points. The Commission's rule required only that which the law requires, that is, that there shall be a definitely stated rate which shall be open to all and be charged to and paid by all alike.

The distance from Washington to Glenndale is only about 13 miles, and the traffic in question is of such character that it is usually accorded low rates of transportation. In fact, if low rates were not applied, this traffic would not move at all. These and other similar matters disclosed by the record incline us to the opinion, and we find, that the charge exacted by defendant as aforesaid for the transportation in question was unreasonable to the extent it exceeded 40 cents per ton of 2,000 pounds, on the actual weight of 74,700 pounds, and that the complainant is entitled to reparation in the sum of \$17.54. We are further of the opinion that said rate of 40 cents

per ton should be continued in force for a period of at least two years from the time it was made effective, namely, March 18, 1908.

The parties have signified their willingness to have this case disposed of upon the complaint and the aforesaid letter of defendant's freight traffic manager. In the complaint it is alleged that the shipment in question was consigned to S. B. Sheibley; that said Sheibley acted in the premises for and on behalf of White Water Farms Company, the complainant herein, and that defendant compelled said Sheibley as such agent to pay the transportation charge which is the subject-matter of complaint. As none of these statements is denied by defendant, and since Mr. Sheibley is complainant's president and acts in this case as its attorney, defendant will be required to pay the reparation to said White Water Farms Company.

An order in accordance with the views herein expressed will be entered.

13 I. C. C. Rep.

No. 1385.

FAIN & STAMPS

v.

ATLANTIC COAST LINE RAILROAD COMPANY AND
CENTRAL OF GEORGIA RAILWAY COMPANY.

Submitted April 30, 1908. Decided May 4, 1908.

A formal complaint being at issue, the parties adjusted the matter without a formal hearing, filed with the Commission the terms of the adjustment, and consented that the Commission establish a rate for the future and order reparation. Order made accordingly.

Moore & Pomeroy and W. W. Hood for complainant.

Ed. Baxter and R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complaint was filed January 4, 1908, and alleged that the complainant is a copartnership composed of W. P. Fain and W. O. Stamps, engaged in the wholesale grocery business in Atlanta, Ga.; that the defendants are common carriers between points in the state of Florida and points in the state of Georgia, and as such subject to the interstate commerce laws; that 5 carloads of oranges were shipped from St. Petersburg, Fla., over the Atlantic Coast Line Railroad and the Central of Georgia Railway and delivered to complainant at Atlanta, Ga.; that in addition to the regular freight charges on said shipments the said Central of Georgia Railway Company demanded and collected from complainant the sum of \$45 per car for refrigeration charges; that said charges were unreasonable and unjust, and that neither of the defendants had filed a tariff for refrigeration charges between the points named; that refrigeration on oranges between the points named should not have exceeded \$10 per car; that complainant had made demand upon the Central of Georgia Railway Company for refund of the sum of \$175, the same being \$35 per car for each of the said 5 cars; and prayed for reparation in the sum of \$175, and the establishment of a refrigeration charge between the points named not to exceed \$10 per car, and for general relief.

The defendants filed their joint and several answers January 25, 1908, denying the general allegations, but admitting that the refrigeration charges between the points named were at the rate of \$45 per car, denied that such charges were unreasonable or unjust.

Before the case was set for hearing complainant informed the Commission that a satisfactory adjustment had been reached whereby the railroads were to establish a refrigeration charge of \$35 per car on oranges between the points named and refund to complainant the amount it had paid in excess thereof. The Commission replied that the correct procedure would be to file with the Commission a statement showing the terms of the settlement, with request for the Commission to make proper order to dispose of the case, such statement to be signed by all the parties. Thereafter, on April 13, 1908, complainant filed a supplemental petition setting forth the terms of adjustment as above, and on the same day the Atlantic Coast Line Railroad Company, by its proper officials, filed with the Commission an application requesting an order for the payment of reparation in the form prescribed by the Commission for reparation in informal complaints, and therein made explanation as follows:

At the time these shipments moved we published no refrigeration rate on oranges from St. Petersburg, Fla., to Atlanta, Ga., but carried in our tariff a note providing for the rate applicable to the point next beyond; since that time, namely, March 28, 1908, we have published a rate for refrigeration between these points of \$35 per car, and we desire to protect said low rate on these shipments.

Adding:

It is admitted that the lawful rate applicable at the time and over the route shipment moved was, under all the circumstances and conditions then existing, excessive and unreasonable.

On April 30, 1908, the Atlantic Coast Line Railroad Company and the Central of Georgia Railway Company filed additional authority for the Commission to make such order in this case as may be proper, and asked authority to refund to complainant the specific sum of \$50, the same being at the rate of \$10 per car collected by the defendants in excess of the rate now admitted to be reasonable on the shipments in question. The Commission has made no investigation as to the reasonableness of the rate adjustment and expresses no opinion thereon; but acting upon the facts stated our conclusions are that the charges for refrigeration on oranges from St. Petersburg, Fla., to Atlanta, Ga., demanded and collected from complainant at the rate of \$45 per car on 5 carloads of oranges were unjust and unreasonable in so far as they were in excess of a charge for the same service at the rate of \$35 per car, and that the just and reasonable charge to be hereafter observed for a period not exceeding two years from the 1st day of July, 1908, for the refrigeration of oranges in carloads from St. Petersburg, Fla., to Atlanta, Ga., should not exceed \$35 per car; and that the defendants refund to complainant so much of the total refrigeration charges as are herein found to be excessive, namely, \$50 in all.

An order in accordance herewith will be issued.

No. 1193.

S. MACMURRAY, DOING BUSINESS UNDER THE NAME OF
WOOD RIVER GRAIN COMPANY,

v.

UNION PACIFIC RAILROAD COMPANY.

Submitted April 27, 1908. Decided May 4, 1908.

Reparation on account of alleged unjust discrimination of defendant in not furnishing complainant with his proper share of cars for shipment of grain at Wood River, Nebr., in November and December, 1906, while during that time complainant's competitors at that station were favored with grain cars, denied, as the testimony discloses that the time mentioned was during the car-shortage season, and that the business of complainant and his competitors suffered in common during that time, and no undue discrimination in furnishing cars by defendant was satisfactorily shown.

W. H. Thompson for complainant.

F. C. Dillard for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant buys and sells grain at Wood River, Nebr., a local station on the Union Pacific Railroad. In addition to complainant, the Omaha Elevator Company, the T. B. Hord Grain Company, and the Conrad Grain & Elevator Company are there engaged in the same business. The complaint is that during November and December, 1906, defendant unduly discriminated against him and in favor of other dealers in the furnishing of cars for shipments of grain. Reparation on account of the alleged unjust discrimination is asked in the sum of \$2,000.

Complainant owns two warehouses, with a total capacity of about 12,000 bushels, located from 80 to 200 feet from the tracks of the railway. He has no elevator, but by means of scoop shovels loads the cars from wagons, in which the grain is hauled either from the warehouses or directly from the farms. To load one car requires from 16 to 20 wagonloads and usually takes as much as a day and sometimes more.

Complainant's competitors, above named, own and operate elevators and load a car in about two hours. The Omaha Elevator

Company has an elevator and warehouse capacity of 62,000 bushels; the Hord Grain Company, 60,000 bushels; and the Conrad Grain & Elevator Company, 46,000 bushels. On an average there are shipped from Wood River about 250,000 bushels each year, of which, it was testified by complainant, he ships about 10 per cent, or 25,000 bushels. The testimony is conflicting as to just what proportion of the grain each of the elevator companies handles, but it fairly appears that the Conrad Company handles nearly half of the total.

In the fall of 1906, when there was great shortage of equipment throughout the country, this was very marked on the lines of the Union Pacific, including the station at Wood River. The daily car record of defendant, submitted in evidence, shows Wood River was short of the demand on an average about 15 cars per day during November and December of that year. The records indicate that during these two months the four grain companies were supplied a total of 89 cars, of which complainant received 7, the Conrad Company 49, and T. B. Hord Company 19, and the Omaha Elevator Company 14. While all these dealers were demanding many more cars than they were able to secure, the elevators and warehouses were practically filled to their capacity all the time because of inability to secure cars.

The agent of the defendant at Wood River testified that he had received special directions to make no discrimination against complainant in the distribution of cars, and that he had not made any such discrimination. He further testified that during this time it was the policy of the company to so conduct its business as to secure as rapid handling of equipment as possible, and that to carry out this policy he so distributed the cars as to secure the promptest loading, having due regard for the rule of the company that 48 hours should be allowed for loading. He insisted that he had supplied complainant with his fair proportion of cars, as determined by the demand therefor and the ability to handle the business when the cars were supplied.

From a statement taken from the records of the defendant, furnished at the request of the examiner, it appears that during the year 1906, prior to the period covered by the complaint, there were shipped cars of grain by the four grain companies at Wood River, as follows:

Conrad Grain and Elevator Company.....	150
T. B. Hord Grain Company.....	102
Omaha Elevator Company.....	58
MacMurray (complainant).....	17

This shows that complainant during the year 1906 shipped out about 5 per cent of the grain. Complainant insists that he could

have greatly increased his business if he had been supplied with cars as needed.

While it is no doubt true that under the circumstances of general insufficiency of transportation facilities prevailing during the period covered by this complaint, complainant could have greatly increased his business, if supplied with cars as needed, it is not apparent that he could have done so had his competitors also been supplied with all cars needed by them. They all, in common with shippers throughout the country, suffered in the same way from the effects upon their business of the so-called car shortage. Demands were being made by the competitors of complainant at Wood River upon the defendant for more cars during the same period and vigorous protests were made by them on account of the failure of the defendant to furnish a sufficient number of cars. The business of complainant and of his competitors suffered in common. No undue discrimination in the matter complained of has been satisfactorily shown.

The complaint will be dismissed.

13 I. C. C. Rep.

No. 1363.

J. T. WELLINGTON; V. M. MURPHY, DOING BUSINESS UNDER THE FIRM NAME OF MURPHY COAL & FEED COMPANY, AND LANING-HARRIS COAL & GRAIN COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Submitted April 6, 1908. Decided May 4, 1908.

Complainants are entitled to recover from defendant sums mentioned in the report as reparation on account of the nonabsorption of switching charges at Kansas City on specified shipments of wood made under the circumstances appearing in this case.

C. W. Durbin for complainants.

E. B. Peirce for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainants are engaged in buying and selling wood and coal at Kansas City, Mo. They asked for reparation in the sum of \$102.50 for switching charges of \$3 or \$3.25 per car, according to the specific deliveries, paid by them on certain shipments of wood in carloads, originating at Gerster, Collins, Vista, and Chester, Mo., on the Kansas City, Clinton & Springfield Railway and carried by that line to its junction with the St. Louis & San Francisco Railroad at Olathe, Kans., and by the latter line to Kansas City.

For several years prior to the filing of this complaint on December 9, 1907, the St. Louis & San Francisco Railroad Company had in effect a tariff quoting rates on wood from the points of origin named to Kansas City, in connection with the Kansas City, Clinton & Springfield Railway. This tariff, or a circular amendment thereto, provided that the switching charges of the Kansas City Belt Railway, under which the transfer of the cars is made from the defendant carrier's terminal to the respective places of business of the complainants, would be absorbed as to shipments producing net revenue of not less than \$10 per car to the "Frisco System." For a long time prior to November 1, 1906, the switching charges under this tariff as construed

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by the defendant's agents had been absorbed when the freight revenue amounted to \$13 or more per car to the two roads performing the through transportation. About November 1, 1906, defendant appears to have been advised by its counsel that these switching charges could be lawfully allowed only where the net revenue per car received by it amounted to \$10. It seems to have been the intention of the defendant to absorb this switching charge all the time, and on December 24, 1906, it issued a tariff providing that it would absorb the same when the revenue was as much as \$10 to the two roads named.

At the hearing counsel for the defendant stated that it admitted that subsequent to December 24, 1906, the date the tariff was actually filed with the Commission, it should pay all the switching charges claimed by complainants.

Complainants claim reparation for only six cars shipped prior to December 24, 1906, all the other shipments having been made subsequent thereto. Counsel for complainants stated that settlement on the basis above stated would be satisfactory to them, and asked to withdraw the complaint as to shipments made prior to the above-named date.

The total amount of reparation claimed by all the complainants was, as stated, \$102.50. The defendant offers to pay \$84.50, this being the amount paid by complainants, as hereinafter stated in detail, for the switching of the cars moving subsequent to December 24, 1906. On shipments moving subsequent to that date J. T. Wellington has paid on 22 cars moving from said points of origin to Kansas City a total of \$66, the Laning-Harris Coal & Grain Company has paid on 3 cars \$9.50, and the Murphy Coal Company has paid on 3 cars \$9. Some of these charges have been imposed on shipments moving since the effective date of the tariff referred to, providing clearly and definitely for the absorption of these charges by the defendant. Why the charges should have been imposed on shipments since that date is not explained.

It is clear that since the date on which the tariff last referred to became effective the exaction of these switching charges by the defendant was in violation of its tariff and without excuse. It is our conclusion that, in view of all the facts and circumstances, complainants are entitled to reparation, respectively, in the principal sums above stated, covering the switching charges exacted on shipments embraced in this complaint and which moved subsequent to December 24, 1906, with interest at the rate of 6 per cent per annum from dates as follows:

On the sum awarded to J. T. Wellington, from May 4, 1907; Laning-Harris Coal & Grain Company, from May 30, 1907; and the Murphy Coal & Feed Company, from January 5, 1907.

An order will be entered in accordance with these conclusions.

13 I. C. C. Rep.

No. 1323.

GEORGE R. REYNOLDS

v.

SOUTHERN EXPRESS COMPANY.

Submitted April 15, 1908. Decided May 4, 1908.

1. The law requires that the several classes of common carriers subject to its provisions shall fix just and reasonable charges for transportation services, and the authority of the Commission to prescribe a reasonable rate when invoked in a proper case is not restricted by the terms of any agreement between an express company and a railroad company.
2. It is not sufficient for a carrier when called upon to justify a rate, the reasonableness of which is questioned, to assert that its rates generally are fair and just and that no change may properly be made in any particular rate because it would disturb the integrity of the system as a whole and produce inconsistencies. In dealing with a particular rate the Commission may consider such other rates as affording a basis for comparison, but where a given rate is found to be unreasonable the Commission will not hesitate to order such rate reduced, although the reduction might disarrange the relative adjustment existing between this and other rates.
3. Defendant's rate on cream of \$3.90 per 10 gallons from Columbia, Tenn., to Jacksonville, Fla., held to be unreasonable, and a reasonable and just rate therefor not exceeding \$2.75 for the movement of the cream and the return movement of the empties prescribed.

Harwick & Jennings for complainant.

W. E. Kay and *R. C. Alston* for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint involves the reasonableness of defendant's rate on cream from Columbia, Tenn., to Jacksonville, Fla.

Complainant is a retail dealer in cream at Jacksonville and commenced shipping from Columbia in 1900, when the rate was 15 cents per gallon, or \$1.50 per 10-gallon can, with an added charge of 25 cents for the return of the empty can. This rate remained in effect until April 1, 1907, on which date an advance was made to \$3, which was applied until May 13, 1907, when the rate was advanced to \$3.90, with

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an added charge of 15 cents for the return of the empty can and tub used for packing the cream in ice. This charge of \$3.90 per 10 gallons of cream is constructed under Southern Express Company Commodity Tariff No. 3377, which names a rate of \$2.50 per 100 pounds to apply on the gross weight, "except that an allowance of 25 per cent from gross weight may be made when it is necessary to use ice for preservation." The gross weight of a 10-gallon can of cream incased in a tub and packed with ice is 208 pounds, and making an allowance of 25 per cent of this for the ice the rate of \$2.50 per 100 pounds applied to the remaining 156 pounds produces the charge of \$3.90.

The tub in which the cream is packed weighs 50 pounds and is 26 inches in height, 20 inches across the top, and 17½ inches across the bottom. The cream is estimated to weigh 10 pounds to the gallon and the can weighs 22 pounds.

It is claimed that when the rate of \$1.50 per 10-gallon can was made effective it was intended to apply on the weight of the cream and the can only, and not on that of the ice and tub. This rate, however, was applied for several years to the movement of the cream packed in tubs containing ice, and this practice was not discontinued until after the enactment of the amended act of June 29, 1906. It was stated by Mr. Loop, vice-president of the Southern Express Company, that when the present rate was established no advance in the rate on the cream itself was contemplated. It was simply intended to readjust the rate so as to afford compensation to the express company for the carriage of the tare weight of the ice and tub. Another object of this readjustment was to make this rate consistent with the uniform basis which the adoption of the new classification was intended to accomplish, and upon this point Mr. Loop stated:

I do not think the express company could afford to make a lower rate on cream from Columbia to Jacksonville than the one now existing, because that would affect rates on other commodities and the same commodity between other points, and generally disarrange the logic of this tariff system, and the express company had better lose this business, whether it made any money or not, than to make the rate. The object of abrogating that special rate, and putting cream into the commodity tariffs and charging what our rate now is from Columbia to Jacksonville, is not to get any more money out of the consumer or the dealer, but it is to make a consistent tariff and we may be losing money in making that, but it is better that we should lose that money than to have an illogical and inconsistent tariff.

The contract between the Louisville & Nashville Railroad Company and the Southern Express Company provides that the express company shall pay to the railroad company amounts equal to 45 per cent of the gross earnings derived from the express business transacted on its lines. This contract also provides that the express company shall not, except with the consent of the railroad company,

carry express matter at less rates than one and one-half times the freight tariff rates of the railroad company, except money, bullion, securities, jewelry and valuables, packages of papers and *perishable matter*, and matter that may be transported in the United States mails, as to all of which exceptions the express company shall be at liberty to regulate and fix its own rates, subject to the approval of the railroad company; such rates to be withdrawn if disapproved.

The contract between the Atlantic Coast Line Railroad Company and the Southern Express Company provides that the rates per 100 pounds of the express company shall not be less than the class freight rates of the railroad for any freight which originates at initial and is destined for intermediate points, or vice versa, on the lines of said railroad—

It being understood, however, that on all business, regardless of its origin or destination, which is competitive or can be reached by other routes, and upon money or other valuables, and matter which can be transported by United States mail, the express company may regulate and fix its own rates, it being agreed that all rates of the express company must be approved by the railroad, and the express company further agrees to immediately withdraw any rate upon notice of its disapproval by the railroad.

This contract further provides that—

Of the gross revenue earned and collected from the transportation of perishable freight, the express company shall pay to the railroad 50 per centum; of the gross revenue earned and collected from the transportation of other freight and money packages, except those of the railroad, the express company shall pay to the railroad 40 per centum, it being understood that the charges for transportation of perishable freight shall be so regulated by the express company that the 50 per centum paid to the railroad shall not be less upon any article transported than the railroad would receive on the same if shipped as ordinary freight.

There are no through railway rates in effect from Columbia to Jacksonville via the Louisville & Nashville and the Atlantic Coast Line. The first class rate from Columbia to Montgomery is 87 cents per 100 pounds, as published in Louisville & Nashville Tariff I. C. C. No. A-5456, and the first class rate from Montgomery to Jacksonville is 66 cents, as shown in Louisville & Nashville Tariff I. C. C. No. A-8053. Cream shipped in less than carload quantities with fresh meat and other packing-house products, etc., takes the first class rate under the Southern Classification. The empty wooden tubs returning take the third class rate, which is 56 cents per 100 pounds from Jacksonville to Montgomery, as per Atlantic Coast Line Tariff I. C. C. No. 4744, and 61 cents per 100 pounds from Montgomery to Columbia, as shown in Louisville & Nashville Tariff I. C. C. A-5456. The Southern Classification provides that the minimum charge shall be for 100 pounds at the class or commodity rate to which shipment belongs, but not higher than first class. It will thus be

seen that the aggregate freight charges under these tariffs for the transportation of 10 gallons of cream shipped in the manner described, including the return movement of the empty receptacles, would be approximately \$4.35.

Since the hearing was had in this case the defendant has reissued its commodity tariff No. 3377, effective May 20, 1908, transferring cream from second to fourth class, reducing the rate from \$2.50 to \$2 per 100 pounds. Under this tariff, therefore, the total charges on the gross weight of the shipment, including the return of the empty receptacles, would be \$3.27, as against \$4.05 under the tariff now in effect.

The volume of the cream traffic moving between Columbia and Jacksonville is small and would not be attractive to the railroads even if it could be safely handled by freight for this distance, which is 646 miles via the Louisville & Nashville to Montgomery, Ala., and thence via the Atlantic Coast Line to Jacksonville, the route over which this traffic is carried.

Ordinarily the railroads only engage in the transportation of milk and cream for comparatively short distances and then, for the most part, where the volume of the traffic warrants the operation of special milk trains. The cream traffic alone is seldom, if ever, sufficient in volume to make it attractive to the railroads, and it is doubtful whether as a practical matter cream could be satisfactorily transported by freight train a distance of 646 miles in this territory.

Prior to 1900 complainant shipped cream via the Clyde Line from New York, but discontinued doing so for the reason that the daily express service was preferable, since it obviated the necessity of buying several days' supply at one time and keeping the same in stock, in consequence of which and the longer time in transit it was subject to deterioration. All cream shipped from New York is previously shipped there from other points. As a practical matter only wholesale dealers can profitably handle cream shipped in this way from New York, and so far as the small dealers at Jacksonville are concerned the New York market affords no competition with Columbia.

A contract between the express company and the railroad companies over whose lines it operates providing that the former shall not charge less than a certain percentage over the railroad rate applying on the same commodity between the same points can not be considered as a controlling factor in passing upon the reasonableness of the express rate. Ordinarily the railroads engage in the transportation of commodities which move in large volume and do not attempt to provide facilities or to name rates which would encourage the shipment by freight of smaller articles infrequently the subject of transportation. This is especially true of perishable commodities

requiring quick movement, so that the express company is left free to take care of this class of traffic. It is therefore not improbable that occasional shipments of this character could not be handled as cheaply by the railroad, which has not been warranted by past experience in providing necessary facilities therefor. The Commission will of course notice the railroad rate as affording a basis of comparison, but the law requires that the several classes of common carriers subject to its provisions shall fix just and reasonable charges for transportation services, and the authority of the Commission to prescribe a reasonable rate when invoked in a proper case is not restricted by the terms of any agreement between the express company and the railroad company.

(The main reasons alleged in justification of the increased rate are, first, that it was necessary in order to make the rates applying over the entire system on a logical and consistent basis, and, second, in order to compensate the express company for handling the extra weight of the ice and tub.

In our view, it is not sufficient for a carrier when called upon to justify a rate, the reasonableness of which is questioned, to assert that its rates generally are fair and just and that no change may properly be made in any particular rate because it would disturb the integrity of the system as a whole and produce inconsistencies. This proposition is too general and theoretical for acceptance by us in the application of the requirements of the law to a practical situation. The Commission has authority under the law to make an order only concerning the rates involved in a proceeding before it. It is not practicable in such a proceeding to investigate and pass upon the reasonableness of the entire system of rates maintained by a carrier. In dealing with a particular rate it is of course the purpose of the Commission to consider such other rates as afford a basis for comparison, but where a given rate is found to be unreasonable the Commission will not hesitate to order such rate reduced, although the reduction might disarrange the relative adjustment existing between this and other rates.)

It is conceded by the express companies that a rate of 15 cents per gallon would afford reasonable remuneration for the service performed in transporting the net weight of the can and cream from Columbia to Jacksonville. That rate was voluntarily fixed by the defendant and remained in effect for such length of time as to create a presumption that it was reasonably remunerative. We will assume that this rate was established without anticipation of the necessity for handling the cream in a tub packed with ice, although it is doubtful if a single shipment ever went through uniced. The rate of \$1.50 applied to the 10-gallon can of cream weighing 122 pounds yields a

rate per pound, approximately, of $1\frac{1}{2}$ cents. At this rate the 88 pounds consisting of ice and tub would yield a revenue of \$1.10, which, added to the \$1.50 charge for the cream and can, makes a total charge of \$2.60.

It is the opinion of the Commission, upon full hearing and consideration of all the facts, circumstances, and conditions surrounding this transportation, that the rate herein complained of is unreasonable and unjust to the extent that it results in the exaction of charges in excess of \$2.75 for the carriage of 10 gallons of cream shipped in a tub of sufficient size to permit of necessary refrigeration and the return of the empty can and tub, and it is our conclusion that the reasonable and just rate to be hereafter charged as a maximum should not exceed that amount as an aggregate charge for the movement of the cream and the return movement of the empty receptacles incident thereto. An order will be entered in accordance with these conclusions.

13 I. C. C. Rep.

No. 1372.

BENTON TRANSIT COMPANY.

v.

BENTON HARBOR-ST. JOE RAILWAY & LIGHT COMPANY.

Submitted May 6, 1908. Decided May 11, 1908.

1. The withdrawal of lake-and-rail rates for the winter during the period of closed navigation with the intention of restoring them with the opening of navigation in the spring is not sufficient to take from the jurisdiction of the Commission a rail line which, like the defendant, lies wholly within one state, because during that limited time it has no connections by which it can actually engage in interstate traffic.
2. The complaint in this case was filed the day after certain interstate rates had been suspended for the winter; but it appeared, when the complaint came on for hearing, that the rates had been restored. Upon objection made that the Commission was without jurisdiction to proceed except upon a new or amended complaint; *Held*, That the point was not well taken; and that, having jurisdiction when the complaint came on to be heard the Commission, being an administrative body, ought not to delay the hearing upon a purely technical objection that does not reach the merits of the controversy.
3. Whether a satisfactory through route exists depends upon the facts and circumstances of each case. While the three steamboats of the Graham & Morton Line, with which the defendant now has through routes and joint rates for the transportation of fruit from certain points in the state of Michigan by rail to Benton Harbor and thence across Lake Michigan to Chicago, can doubtless carry all the fruits produced in the territory in question, its ability satisfactorily to handle the traffic is to be measured by the least adequate of its facilities. And if it can not promptly deliver the traffic over its wharf at Chicago, and thus causes delays that result in financial losses to shippers, the through route by that line can not be said to be satisfactory.

*H. L. Southworth and John E. W. Wayman for complainant.
Humphrey S. Gray for defendant.*

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In the territory proximate to Benton Harbor and St. Joseph in the state of Michigan there is an extensive cultivation of raspberries, strawberries, melons, cantaloupes, cherries, peaches, and other fruits for which the city of Chicago offers a large market. The shipments from those ports across the lake ordinarily amount to a million and a

half or two million packages during each fruit season. A substantial portion of the traffic is carried by the complainant from its wharf at Benton Harbor to its wharf in Chicago. But shippers at inland points who prefer that line now have to pay the local rates in and out of Benton Harbor, while shippers who use the Graham & Morton Line, the only other water line that participates in the traffic, have the benefit of through routes and joint rates. The complainant therefore desires the restoration of the through routes and joint rates which the defendant formerly accorded to it; and to that end it has filed its petition praying for an order requiring the defendant to join with it in reestablishing them. The facts and circumstances shown of record are to some extent unusual and for that reason it is desirable to outline the controversy at some length.

Until a few years ago the steamboat companies gathered the fruit from the outlying farms to their wharves at Benton Harbor in large wagons locally known as fruit "schooners." Part of this expense was borne by the farmers and part was absorbed by the boat lines. Later the defendant, the Benton Harbor & St. Joe Railway & Light Company, originally organized for the purpose of furnishing light and a street-car service for the two communities referred to, reached the conclusion that it would be profitable to provide facilities for moving the fruit by rail from the country producing points to the wharves. It accordingly extended its road about 14 miles into the fruit-producing district to a town called Eau Claire. The line was completed in time to enable the defendant to engage in the transportation to Chicago of the fruit grown during the season of 1906. A spur was projected from its street-car tracks on Main street in Benton Harbor through Water street into the covered dock of the Graham & Morton Line. From a near-by point, apparently on the same spur, fruit was also unloaded during that season and carried to the steamboat of the complainant.

With both water lines the defendant established through routes and joint rates to Chicago from points where the country highways cross its line between Eau Claire and Benton Harbor. These crossroad points were put in one group and the water rate from port to port was extended so as to include all the inland points on the defendant's line. By agreement among themselves the defendant retained 40 per cent of the joint through rate and the boat lines 60 per cent. The arrangement seemed to result in economies to all concerned. The boat lines and the farmers were saved a large part of the expense of laboriously concentrating the fruit at the wharves in wagons. The producers were enabled to pick their fruit in the late afternoon and have it taken by the defendant at once to the ports, where it was loaded upon the boats and delivered in the best condition on the wharves at

Chicago, usually before daylight the next morning. The group rate enabled the farmer at the extreme eastern limit of the producing district to reach the market practically as quickly and at the same cost for transportation as the producer in the immediate environs of Benton Harbor and St. Joseph. In short, this admirable arrangement under which the traffic was conducted brought the entire fruit-producing community very close to the consuming market on terms that were apparently satisfactory.

The complainant's wharf at Benton Harbor is at the foot of Seventh street. During the fruit-shipping season of 1906 the fruit cars were first taken to the wharf of the Graham & Morton Line, where the fruit consigned to Chicago over that line was unloaded. The car was then set at a point in Water street about two blocks from the wharf of the complainant, and from that point such fruit packages as were to be taken to Chicago by the complainant were carried to its steamboat. But when lake navigation opened for the season of 1907, the defendant, while continuing the through routes and joint rates with the Graham & Morton Line, refused to renew the arrangement with the complainant. It has declined also to enter into any arrangement with the complainant for the present year. The complainant has accordingly filed this application. The matter was heard quite fully and the record presents for consideration two questions, one of law and one of fact. We shall first consider the question of law.

The defendant has no rail connections and its line lies wholly within the state of Michigan. It can therefore participate in interstate commerce and become subject to the provisions of the amended act to regulate commerce only by entering into some arrangement with a water line at Benton Harbor or St. Joseph for the continuous transportation of merchandise or passengers to an interstate point. Although it declined to enter into such an arrangement with the complainant for the season of 1907, it had such an arrangement with the Graham & Morton Line as heretofore stated. It was therefore in every sense an interstate carrier subject to the provisions of the act and to the jurisdiction of the Commission. But according to the custom of lake-and-rail carriers to take out their joint rates during the period of closed navigation these interstate rates were suspended for the winter of 1907 and the steamboats of the Graham & Morton Line were docked for the season. On the following day, namely, December 14, 1907, this complaint was filed.

The question of law which arises upon these facts is whether the Commission may entertain jurisdiction of a complaint against a common carrier which, at the time when the complaint was filed, had no connections by which it could actually carry on interstate traffic.

While answering to the merits of the complaint, the defendant also denied that it had any joint through arrangements with the Graham & Morton Line when the complaint was filed; and it therefore denied that any circumstances existed to give the Commission jurisdiction. It is to be observed, however, that it was admitted at the hearing that the cancellation in December, 1907, of the through routes and joint rates between the Graham & Morton Line and the defendant was not intended as a rupture of such relations between the two companies, but was simply a suspension of the arrangement during the period of closed navigation. It was also admitted that when the through arrangements and rates were suspended it was with the intention to restore them again the following spring. In fact, as we understand the schedule filed with the Commission in December, 1907, it does not purport to be a cancellation of the through routes and joint rates with the defendant but a mere suspension of them. And the schedule filed in March, 1908, was not the establishment of a new arrangement but merely a restoration of the old.

In our judgment the mere withdrawal of lake-and-rail rates during the winter months, in accordance with what has been the custom of carriers engaging in such traffic, with the intention of restoring them with the opening of navigation in the spring is not sufficient to take from our jurisdiction a rail line, which, like the defendant, lies wholly within one state, simply because during that limited period of time it has no connections by which it can actually engage in interstate traffic. In such cases we hold that the jurisdiction of the Commission over the carriers is not interrupted. Moreover, the defendant not only permitted the cause to be set down for hearing, but it permitted it to come on for hearing on April 20, 1908, without moving to dismiss the complaint for want of jurisdiction. In the meantime, by a schedule duly filed and published and which became effective on March 10, 1908, the arrangement for through transportation and rates between the defendant and the Graham & Morton Line was restored for the period of open navigation during the year 1908. The defendant was therefore fully subject to the provisions of the act and to the authority of the Commission at the time of the hearing, and all phases of the matter were fully brought out in the testimony. To hold, therefore, as the defendant contends should be done, that the Commission was without authority to proceed except upon a new or an amended complaint, filed after the rates were restored, would be to give recognition to a purely technical objection that does not reach the merits of the controversy at all. With such objections we have ordinarily little sympathy. Nothing is more essential to the general welfare than the prompt adjustment of controversies involving the movement of the commerce of the coun-

try; and so long as the Commission keeps within the scope of its powers and does not usurp authority not given to it by law, it is important so far as possible to lay aside legal subtleties and technicalities and to get at the real merits of such contests. Whatever may be said as to our jurisdiction when the complaint was filed, there was clearly no want of jurisdiction at the time of the hearing. We are authorized therefore, and it is our duty, to proceed to a consideration of the facts.

The question of fact that requires to be examined is whether there now exists a satisfactory or reasonable through route from the fruit-producing territory in question to Chicago. On that point much testimony was taken. It appeared that the complainant has but one steamer, and that of a capacity of only 350 tons. The Graham & Morton Line, on the other hand, has one of the largest fleets plying on Lake Michigan. Between Benton Harbor and Chicago it keeps three steamers in service during the fruit-shipping season. Most of its fruit traffic from this district is carried on the *Benton Harbor*. The extensive deck of that steamer permits it to load all the fruit in the open air, to the advantage of the fruit, as it is said. In this respect it differs from the complainant's steamboat, which must carry much of its load in the hold. The Graham & Morton Line enjoys another advantage that the complainant does not have. If the fruit car of the defendant should be late in arriving at Benton Harbor, there is usually time to enable it to catch the steamer at St. Joseph, where it stops customarily after leaving Benton Harbor. That arrangement thus saves the fruit consigned by that line from being held over until the next night. Its wharves at Chicago are of goodly size, but so situated that the covered dock meets the vessel at right angles and does not run alongside. This involves some delay in that instead of having to carry the fruit across the warehouse to the wagons, as would be the case were it built alongside the steamer, much of the fruit must be carried by hand the full length of the warehouse to the farthest doors, where it is to be delivered to the wagons in waiting. The wharf of that line lies near the heart of the wholesale district of Chicago, and the wagon haul to the commission-houses is therefore a short one. The wharf of the complainant is across the river and this involves a wagon haul of some blocks to the commission-houses. Nevertheless it is earnestly contended by the complainant that its wharf is so much better adjusted for prompt unloading that the commission-houses to which the fruit is consigned are able to get their shipments away and at their places of business much more promptly than is possible from the dock of the Graham & Morton Line. This statement is supported by credible testimony of repeated instances of delays at the docks of the latter line, the result of which was that the consignees were not able to offer

the fruit on the market until later in the morning, and thus lost the higher prices which are customarily to be had for the early morning offerings. On this point there was a sharp conflict in the testimony. Other commission merchants strongly asserted that they had experienced similar delays in getting their consignments away from the wharf of the complainant. Some congestions at its wharf were admitted by the Graham & Morton Line to have occurred during the season of 1906. This was attributed to the fact that during that year they had a line of boats running to Lake Superior that used the same dock in Chicago and occasionally occupied the wharf when the fruit boats arrived. The cargoes of those boats when unloaded into the dock left a limited amount of space in which to handle the fruit from Benton Harbor. The Lake Superior line of boats has now been abandoned, and it is claimed that that cause of congestion at the wharf has been eliminated. The testimony tends to show however that even during the year 1907, after that service had been abandoned, there were some congestions and delays at the wharf, although they were infrequent.

Each of the two competing boat lines has its adherents among the fruit consumers in the territory in question and among the commission merchants who handle the fruit at Chicago. Some of the witnesses whose fruit had not been promptly delivered by the Graham & Morton Line from its wharf at Chicago testified that they would not again use that line. Other witnesses made a similar complaint of the wharf service at Chicago of the Benton Transit Company. Neither company has succeeded in fully satisfying the fruit shippers or the commission merchants. To meet the criticism made of the character of its wharf service, officials of the Graham & Morton Line at the hearing entered upon a detailed explanation of the carefully considered methods of that company for unloading the fruit packages consigned to the several commission houses, and in sorting and placing them in piles at particular doors of its covered dock, where they may be promptly secured. But the very care bestowed by it in the handling of the fruit at its wharf impresses us with the thought that the conditions that surround its dock require system and regulation in order to secure prompt delivery of the fruit to the commission houses. And the proof seems to show that the system adopted is not adequate to overcome the difficulties which gave rise to it. Although the dock itself is 310 feet long, the covered warehouse on the dock that meets the vessel substantially at right angles presents a front to the vessel of only 66 feet. The warehouse runs back 160 feet along what is referred to in the record as Dock street. This frontage on the street can be opened up so as to enable wagons to back up against the openings. The carry from the boat to the openings increases in distance from the delivery doors nearest the river to the last one, 160 feet away.

This work must necessarily be done by stevedores or deck hands. The proof shows that as many as 32 wagons can back up against the openings and be loaded at the same time. But ordinarily about 150 different commission houses have wagons in waiting every morning for the purpose of getting the fruit consigned to them. Some of these dealers receive from 4,000 to 10,000 packages a day, and such consignments require a number of wagons to haul them away. This means that many wagons are kept waiting for their turn to back up to the doors for their loads. It also means that many commission houses have to wait to secure their shipments. Because of the limited loading space the company, in order to give equal and fair treatment to all its patrons, permits each commission house to load but one wagon at a time. Consignees having more than one wagon therefore have to keep them waiting for their turn. In other words, there is ordinarily a good deal of waiting on the part of consignees and there would be much more waiting and more delay if it were not for the strict enforcement of the wharf rules and regulations to which reference has been made. Notwithstanding all this care, it does happen, as was admitted by the wharf superintendent and other officers of that company, that a congestion will occasionally occur and result in a delay in getting the fruit away from the wharf. An appreciation of this fact by the officers of the Graham & Morton Line doubtless partially explains the negotiations which that company has recently entered upon with a view to securing an additional wharf elsewhere along the river front in Chicago.

Such delays as do occur would not be so important if we were dealing with a different kind of merchandise. Fruit, however, is not only a perishable commodity, but the record discloses that unless it is delivered at the commission houses very early in the morning the consignors lose the benefit of the higher early morning prices. It is true that delays happen infrequently as the dock of the Graham & Morton Line is now managed; but if it happens at all or is likely to happen and to involve shippers in a substantial loss it can not be said that the through route now existing between the defendant and that line is reasonable or satisfactory. With such a traffic, time is of the essence of good transportation and anything short of prompt service at all times can not be said to be satisfactory. In this connection it will be of interest to note the extent of the traffic carried by the complainant and by the Graham & Morton Line during the last three years. In 1905 the complainant carried 738,481 packages; in 1906 it carried across the lake 569,658 packages, and in 1907 a total of 184,133 packages. The Graham & Morton Line during the same years used two steamships, the *Benton Harbor* and the *Chicago*. These two vessels in 1905 carried an aggregate of 873,774

packages; in 1906 they carried 638,368, and in 1907 the total number was 202,373 packages. The two lines have therefore just about divided the traffic during each of these three years. This fact in itself shows that there is a widespread feeling among the fruit-shipping community that the Graham & Morton Line can not successfully handle all the traffic. While the three steamers of that line can doubtless carry all the fruit produced in the territory in question, its ability satisfactorily to handle the traffic is to be measured, as a transportation matter, by the least adequate of its facilities. And the least adequate of its facilities is its wharf in Chicago. If the company is not now always able promptly to deliver one-half the traffic over its wharf, notwithstanding the close observance of its carefully prepared rules and regulations, it would scarcely be possible, if this complainant is crushed out of existence, to handle all the traffic without occasionally imposing costly delays upon some of its shippers.

From a review of all the testimony, and basing our conclusions on the special facts of the case and the special nature of the traffic, we are of the opinion that the complaint made is well founded and that, in the interest of all the fruit shippers of this region, the defendant should be required to establish through routes and joint rates with the complainant on the same terms now accorded by it to the Graham & Morton Line. For such significance as it may have in relation to the right of this complainant to invoke the jurisdiction of the Commission in such a proceeding it may be well to add that the complainant, by joint tariff arrangements with the Michigan Central and Big Four railroads, is engaged in general interstate transportation.

It does not appear that the complainant has definitely secured any wharf or landing place at Benton Harbor for this season. By arrangement with the municipal council it has heretofore been permitted to use the foot of Seventh street as a wharf, but at the time of the hearing it did not appear that such an arrangement had been effected for this year. There is some question also as to whether the city authorities will permit the fruit cars of the defendant to be stopped on the public highway while the fruit packages are being unloaded and carried to the complainant's steamer. As to these matters the complainant will doubtless have to arrive at some understanding with the authorities of Benton Harbor before it can participate in this traffic. Assuming that it will be able to do this, as it has done in the past, there is no reason why an order carrying out the views here expressed should not now be entered, subject of course to such modifications as may be required when the Commission has been informed of the details of such arrangement as may be made by the complainant with the municipality. It will be so ordered.

No. 933.

IN THE MATTER OF RELEASED RATES.

Decided May 14, 1908.

1. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.
2. If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.
3. If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value, (a) the stipulation is valid when loss occurs through causes beyond the carrier's control; (b) the stipulation is valid, even when loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith; (c) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value; (d) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount.
4. A carrier may lawfully establish a scale of charges applicable to a specific commodity and graduated reasonably according to value. These rates must be applied in good faith, regard being had to the actual value of the property offered for shipment.
5. A carrier must not make use of its released rates as a means of escaping liability for the consequences of its negligence, either wholly or in part.
6. It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law.
7. A stipulation that an additional charge of 20 per cent shall be collected on property that is shipped not subject to limited liability is unreasonable.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Since the passage of the Hepburn Act the Commission has been in receipt of numerous requests for an administrative interpretation of that part of section 20 which deals with the liability of carriers. Before undertaking to set forth its position in concrete

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form, the Commission deemed it advisable to hold an *ex parte* hearing in order to give carriers and shippers alike an opportunity to express their views. Pursuant to that purpose a hearing was held in Washington attended by the representatives of both interests. Inasmuch as the Commission does not take jurisdiction over claims for damages to goods in transit, it must be recognized that this problem is essentially one for the courts. But the validity of so-called "Released Rates" is dependent upon its solution, and, if a definite statement of our position can meet with general acceptance, it will tend to eliminate much troublesome controversy and make for uniformity in railroad practice. We therefore take occasion at this time to give expression to our views, in the hope that they may be of advantage both to the railroads and the shipping public.

In undertaking a solution of this problem we must consider separately losses *caused by the carrier* and losses *due to causes beyond the carrier's control*. It will also be necessary to distinguish between *stipulations for total exemption from liability* and *stipulations limiting the amount of liability*. Bearing these distinctions in mind, we must determine the validity of "Released Rates" of the following character:

I. Rates conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control.

II. Rates conditioned upon the shipper's assuming the entire risk of loss.

III. Rates conditioned upon the shipper's agreeing that the carrier's liability shall be limited to a certain specified value.

Section 20 of the act provides:

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

I. *If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.*

In the absence of express stipulation the liability of a common carrier is not limited to loss occasioned by its negligence or other misconduct. The law has cast upon it an extraordinary responsibility; it is to a large extent an insurer of the goods intrusted to it for carriage. The rule, roughly stated, is that a common carrier is liable for all losses not occasioned by the act of God or the public enemy. But the carrier's right to relieve itself to some extent from this complete responsibility, by special agreement or notice, has long been recognized. It may strip itself of its insurer's liability and remain responsible only for its negligence and other misconduct. *York Manufacturing Co. v. I. C. R. R. Co.*, 3 Wall., 107; *N. Y. C. R. R. Co. v. Lockwood*, 17 Wall., 357.

The law on this point is well settled, and a careful study of the provisions of the Hepburn Act will show that the carrier's right in this respect has not been abrogated. The law reads that the carrier shall be liable "for any loss, damage, or injury to such property caused by it * * * and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed." The scope of this prohibition must turn largely upon the construction to be placed upon the word "caused." The word "caused" is not susceptible of a narrow interpretation—it is broad enough to comprehend all losses due to the carrier's misconduct, whether positive or negative in character. But it can not possibly be extended to cover losses due to causes beyond the carrier's control. We are necessarily driven to the conclusion, therefore, that the law places no restriction upon the carrier's efforts to exempt itself from liability for losses which occur without fault on its part. We are of opinion, in short, that in the absence of agreement or notice the carrier's liability is governed by the ordinary common-law rule; but that a stipulation for exemption from liability for losses due to causes beyond the carrier's control is open to no legal objection.

II. *If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.*

The Federal courts have held consistently that it is against public policy for a carrier to exempt itself from responsibility for its misconduct or the misconduct of its agents. They have refused accordingly to give vitality to a stipulation by which a carrier seeks to exempt itself from all liability or from liability for losses caused by negligence. *New Jersey Steam Navigation Co. v. Boston Merchants' Bank*, 6 How., 344; *Express Co. v. Kountze*, 8 Wall., 342; *The Kensington*, 183 U. S., 263, 268. This principle is squarely reaffirmed by section 20 of the act. The statute expressly denies to a carrier the

right to exempt itself from liability for losses caused by it. A stipulation that a shipment is carried at "owner's risk" will therefore be upheld as to losses due to causes beyond the carrier's control; but the provision is entirely void as against loss due to the carrier's negligence or other misconduct.

III. *Rates conditioned upon the shipper's agreeing that the carrier's liability shall be limited to a certain specified value.*

The question here considered is one of great nicety. It can not be dismissed with a general statement. Careful study will show that there are three or four distinct phases, each one of which must be dealt with individually.

(a) Where loss is due to causes beyond the carrier's control the stipulation limiting liability to a designated value is valid.

This follows necessarily from the conclusion we have already reached, viz, that the carrier has an undoubted right to exempt itself from responsibility for losses which it does not cause. *A fortiori*, there is no legal obstacle in the way of a reasonable stipulation limiting the amount which the shipper can recover under the same circumstances.

(b) When the shipper has placed upon his goods a specific value, the carrier accepting the same in good faith as their real value, the rate of freight being fixed in accordance therewith, the shipper can not recover an amount in excess of the value he has disclosed, even when loss is caused by the carrier's negligence.

The limited liability of the carrier in this situation, even as against loss due to negligence, has been generally recognized. The leading case on this point is *Hart v. Pennsylvania R. R. Co.*, 112 U. S., 331, the Supreme Court stating the rule as follows:

When a contract of carriage, signed by the shipper, is fairly made with a railroad company, agreeing on a valuation of the property carried, with a rate of freight based on condition that the carrier assumes liability only to the extent of the agreed valuation, even in case of loss by the negligence of the carrier the contract will be upheld as a proper and lawful mode of securing a true proportion between the amount for which the carrier may be responsible and the freight it receives and of protecting itself against extravagant and fanciful valuations.

We quote further:

If the shipper is guilty of fraud or imposition, by misrepresenting the nature or value of the articles, he destroys his claim to indemnity, because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed. * * * The compensation for carriage is based on that value. *The shipper is estopped from saying that the value is greater.* The articles have no greater value, for the purposes of the contract of transportation, between the parties to that contract.

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The same principle is applicable when the shipper has in some other way concealed the nature or the value of his goods in order to secure a lower rate of freight. If the circumstances call for a disclosure of value and the shipper fails to make such disclosure, he will be concluded by the valuation stated in the bill of lading. The concealment may be just as effective and the fraud just as real as if there had been an affirmative misrepresentation. *Hart v. Pennsylvania R. R.*, *supra*; *Magnin v. Dinsmore*, 56 N. Y., 168; 62 N. Y., 35; *Earnest v. The Express Company*, 1 Woods, 573; *Oppenheimer v. U. S. Express Co.*, 69 Ill., 62.

It does not appear that this principle is in any respect in derogation of the provisions of section 20. The carrier is made liable "for any loss, damage, or injury," and "no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed." But it is of the highest importance to note that this limitation is not secured by contract or notice—the contract has no validity *per se*. It is only right that a carrier who has acted in good faith should be protected against the frauds and misrepresentations of the shipper, and the law accomplishes this through the operation of the principle of estoppel. The shipper is estopped from recovering an amount in excess of the declared value, and the rule is in perfect harmony with the law as it stands to-day. 6 *Cyclopedia of Law and Procedure*, title "Carriers," page 401, note 5.

(c) If the specified amount does not purport to be an agreed valuation, but represents an attempt on the part of the carrier to limit the amount of recovery to a fixed sum, irrespective of the actual value, the stipulation is void as against loss due to the carrier's negligence or other misconduct.

Much confusion has arisen from failure to distinguish between this situation and the situation comprehended in *Hart v. Pennsylvania Railroad Co.*, *supra*. That decision was expressly predicated upon the principle of estoppel; the shipper had misrepresented the value of his property, and had thereby secured the benefit of a lower rate than he was properly entitled to by virtue of the real value. He was estopped by his fraudulent conduct from recovering an amount in excess of the value he had declared. In the case we are now considering, the requisites of estoppel are wanting. An estoppel can not arise unless the party invoking it has been the victim of misrepresentation and has himself acted in good faith. Can it possibly be argued that when a carrier has arbitrarily placed in its bill of lading a stipulation limiting the amount of its liability, regardless of the actual value of the property, it may claim the benefit of an estoppel? Obviously not; it has not acted in good faith, neither has it been the victim of misrepresentation.

The cases which take cognizance of this fundamental difference in principle are numerous and well considered. In *Eells v. St. Louis, K. & N. W. Ry. Co.*, 52 Fed. Rep., 903, 907, the case was carefully differentiated from *Hart v. Pennsylvania R. R. Co.* The court said:

In the case at bar, the contract provision neither states nor attempts an agreed valuation of the animal shipped. Whether the animal is of \$100, \$1,000, or \$10,000, or other value, the contract is silent. But the contract expressly provides for a limitation of liability to \$100, without reference to the valuation of the animal shipped. * * * Such a contract can not be said to be, in the eye of the law, just and reasonable, in its attempt to limit the responsibility for the negligence of the carrier. When tested by the extracts above given from the Hart case, the failure of the contract in the case at bar to meet that test becomes strikingly manifest.

In *Railway Co. v. Wynn*, 88 Tenn., 320, the validity of the doctrine that prevailed in the Hart case was again recognized and again distinguished:

The carrier can not by contract excuse itself from liability for the whole nor any part of a loss brought about by its negligence. To our minds it is perfectly clear that the two kinds of stipulations—that providing for total and that providing for partial exemption from liability for the consequences of the carrier's negligence—stand upon the same ground and must be tested by the same principles. If one can be enforced, the other can; if either be invalid, both must be held to be so, the same considerations of public policy operating in each case.

With great deference for those who may differ with us, we think it entirely illogical and unreasonable to say that the carrier may not absolve itself from liability for the whole value of property lost or destroyed through its negligence, but that it may absolve itself from responsibility for one-half, three-fourths, seven-eighths, nine-tenths, or ninety-nine one-hundredths of the loss so occasioned. With great unanimity the authorities say it can not do the former. If allowed to do the latter it may thereby substantially evade and nullify the law which says it shall not do the former, and in that way do indirectly what it is forbidden to do directly. We hold that it can do neither. The requirement of the law has ever been, and is now, that the common carrier shall be diligent and careful in the transportation of its freight, and public policy forbids that it shall throw off that obligation, whether by stipulation for exemption in whole or in part from the consequences of its negligent acts. This view is sustained by sound reason, and also by the weight of authority.

Referring to *Hart v. Pennsylvania R. R. Co.* and the cases which follow it, the court says:

They were decided upon an entirely dissimilar state of facts, and from a wholly different point of view; that is to say, it appeared to the court, in each and every one of those cases, that there was an agreed valuation stated in the contract as the basis of the carrier's charges and responsibility; and the courts very properly held that in such cases the shipper was estopped to claim a greater sum than the agreed valuation.

Though evident from the reasoning in the body of the opinion in the Hart case, which may now be called the leading case in America, the court is careful to say, in conclusion, that the decision is based alone upon the ground above stated. 112 U. S., 343.

In *Alabama Great Southern Railway Company v. Little*, 71 Ala., 611, it was said:

In the limitation of liability the carrier can not, in any event, stipulate for more than an exemption from the extraordinary liability the common law imposes; the liability extending beyond that of ordinary paid agents, servants, or bailees, denominated the liability of an insurer. Public policy, and every consideration of right and justice, forbid that he should be allowed to stipulate for exemption from liability for losses or injuries occurring through the want of his own skill or diligence, or that of the servants or agents he may employ, or through his own or their willful default or tort. * * * The carrier can not stipulate for an absolute, unqualified exemption from all liability, nor can he stipulate that he will answer, in any and all events, only for a sum less than the value of the goods, because in consideration of reduced rates of freight the shipper may assent to it.

For further authority to the same effect see *Scruggs v. Baltimore, etc., R. R. Co.*, 5 McCrary, 590; *Ormsby v. U. P. R. R. Co.*, 4 Fed. Rep., 706; *Judson v. Western R. R. Corporation*, 6 Allen, 88; *Adams Express Co. v. Stettaners*, 61 Ill., 184; *Ga. Pacific Ry. Co. v. Hugbart*, 90 Ala., 36; *Ga. R. R. Co. v. Keener*, 93 Ga., 808; *Ullman v. C. & N. W. Ry. Co.*, 112 Wis., 150; *Railway Co. v. Sowell*, 90 Tenn., 17; *Rosenfeld v. Peoria, Decatur & Evansville Ry. Co.*, 103 Ind., 121; 53 Am. Rep., 500; *Western Railway Co. v. Harwell*, 91 Ala., 340; 4 Elliott on Railroads, 2836; note, 14 L. R. A., pp. 434, 435; 6 Cyc., title "Carriers," p. 400, b.; Hutchinson on "Carriers," 3d ed., secs. 425-427.

(d) If the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount, liability for the full value can not be escaped in event of loss due to negligence.

This situation is substantially identical with that just considered—the difference is one in form only. If the shipper and carrier conclusively agree that, for the purpose of the transportation, the property shall be deemed to have a specified value which both know to be grossly disproportionate to the true value, the agreement can not be called bona fide. It may be styled an "agreed valuation," but it is obviously an attempt to accomplish what the law forbids. The requirement that the carrier shall not limit in any degree its responsibility for negligence is uncompromising, and it will not yield merely because the parties choose to employ the phrase "agreed valuation." The law will not countenance so obvious a subterfuge.

We are aware that the distinctions which are here drawn have not been invariably recognized, but it is believed that this has been due to a misconception of the real scope of the decision in *Hart v. Pennsylvania R. R.* Careful study of the opinion of the court and of the cases which are cited in support of the decision must lead inevitably

to the conclusion that the principle does not extend beyond the case where the "agreed valuation" is bona fide. It can not apply where the valuation is purely fictitious. To hold otherwise would mean a departure from principles which the Supreme Court has maintained with unvarying consistency. In the Hart case the Supreme Court says:

If the shipper is guilty of fraud or imposition, by misrepresenting the nature or value of the articles, he destroys his claim to indemnity, * * *. He is estopped from saying that the value is greater.

But if the carrier and shipper both know that the value agreed upon is out of all proportion to the true value, it can not be said that the shipper has been guilty of fraud or misrepresentation—he is not estopped from proving the real value of his goods.

It is significant that the cases upon which the Supreme Court placed reliance in the Hart case contain nothing inconsistent with this view, while in several the distinction has been expressly pointed out. In *Harvey v. Terre Haute & Indianapolis R. R. Co.*, 74 Mo., 538, the court said:

Where the reduced value is voluntarily fixed by the shipper with a view of obtaining a low rate of freight, without any knowledge on the part of the carrier that the property was of greater value, it would be a fraud upon the carrier to permit the shipper to recover a greater sum than that fixed by him.

In *South & North Alabama R. R. v. Henlein*, 52 Ala., 606, the court said:

If the measure of the liability thus fixed appears to be greatly disproportionate to the real value of the animal, and the amount of freight received, we should not hesitate to declare it unjust and unreasonable.

In *Graves v. Lake Shore & Michigan Southern R. R.*, 137 Mass., 33, it was expressly found that "the defendant had no knowledge of the value of the goods except that furnished by the statement of the shippers." The court therefore held that the shippers were "estopped to show that it was of greater value than that represented."

In the following cases also it appeared that the shipper perpetrated a fraud upon the carrier, either by a positive misrepresentation or by a concealment of value; the carrier was ignorant of the actual worth of the shipment, and the shipper was estopped from recovering damages in excess of the value disclosed: *Magnin v. Dinsmore*, 56 N. Y., 168; 62 N. Y., 35; 70 N. Y., 410; *Oppenheimer v. U. S. Express Co.*, 69 Ill., 62; *Newburger v. Howard*, 6 Phila. Rep., 174; *Muser v. Holland*, 17 Blatch., 412; *Earnest v. Express Co.*, 1 Woods, 573.

These cases are entitled to special weight, because the Supreme Court has said that they support "the rule which we regard as the proper one."

It is pertinent to quote from certain other cases in which the distinctions here drawn have been clearly appreciated. In *Georgia R. R. Co. v. Keener*, 93 Ga., 808, the court said:

Where a shipper enters into an express contract with a common carrier, by which he agrees in consideration of a reduced rate of freight that the carrier shall not be liable for more than a stated sum in case the goods shipped are lost while in the carrier's possession, the contract will be upheld as to loss not involving negligence on the part of the carrier; but carriers can not, by any special contract, exempt themselves from liability for loss occasioned by their negligence; and this is so as well where the contract provides for partial or limited exemption as where it contemplates total exemption from liability. The shipper, it is true, may, by his representations or agreement as to the value of the goods, estop himself from recovering their full value, notwithstanding they are lost through the carrier's negligence. This would be the case if, upon being required at the time of shipment to state the value of the goods, the shipper misled the carrier by stating a sum less than their value (Code, sec. 2080), or if the shipper and the carrier agreed upon a certain sum as the actual value of the goods and the charge for freight was based upon that valuation. See, on this subject, *Hutchinson on Carriers*, 2d ed., section 260, and cases cited; *Hart v. Railroad Co.*, 112 U. S., 331; *Chicago, etc., Ry. Co. v. Chapman* (Ill.), 23 Am. State Rep., 587, and notes; *Alair v. Railroad Co.* (Minn.), 39 Am. State Rep., 588; also collection of cases in 20 Am. Law Register (1890), p. 771. But the principle which relieves the carrier from liability for more than the agreed value does not apply where the valuation is merely arbitrary and fixed without reference to the real value of the goods, and this is understood by the carrier as well as the shipper. In the present case there was no inquiry on the part of the carrier as to the value of the goods, and it is clear that a valuation of \$5 per 100 pounds for wearing apparel and household goods indiscriminately could not have been understood to represent their actual value. The contract in question was simply an attempt to limit the liability of the carrier, without regard to the actual value of the property; and it follows from what we have said that it was inoperative for that purpose, if the loss was occasioned by negligence on the part of the defendant.

In the case of *Alair v. Northern Pacific Railway Co.*, 19 L. R. A., 764, Judge Mitchell said, following the decision in the *Hart* case:

Assuming, as we must, that the contract was fairly made for the purposes expressed in it, we think it ought to be upheld as just and reasonable. It is not in any proper sense a contract for exemption from the consequences of negligence. In this view we are sustained by the great weight of authority. * * *

Most of the cases, usually carelessly cited as authority on the other side of this question, will be found, on careful examination, to be clearly distinguishable and not in point. In some of them the stipulation was purely and solely one arbitrarily limiting the amount of recovery, without regard to the value of the property, as in *Moulton v. St. Paul, M. & M. R. Co.*, *supra*. In others it was held that the shipper never agreed to the limitation, and for that reason was not bound by it. In others the decision was expressly placed on the ground that both parties knew that the property was of much greater value than that stated in the contract, and arbitrarily inserted a sum grossly disproportionate to the true value, solely for the purpose of limiting the amount of the carrier's liability.

In further support of this position we quote from Judge McClain's learned article on "Carriers" in the *Cyclopedia of Law and Procedure*:

When the pretended agreed valuation is not such in fact, but is simply a cloak for a limitation of liability to a fixed sum, which is less than the real value, the contract will not be valid as against a loss due to negligence. 6 Cyc., title "Carriers," p. 401.

In the third edition of Hutchinson on "Carriers," volume 1, section 427, the governing principle is stated with the same careful qualification:

But while the owner of the goods and the carrier may fix a value on the goods beyond which the carrier in the event of loss will not be liable, the agreement fixing value, in order to be conclusive on the owner, must be bona fide and the value reasonable. If, for instance, the value agreed upon should be so far below the real value of the goods that from their appearance the carrier must have known of the discrepancy, the agreement fixing value would not be bona fide, and, depending on no value at all, would amount to an arbitrary limitation upon the carrier's legal liability which, in the event of loss occasioned by negligence, would not deprive the owner of the right to recover the real value of the goods. While it is true that the owner of goods of great value which are concealed in packages or otherwise hidden from view, and upon which a very inconsiderable value has been placed by him, will be precluded, in case of loss, from the right to recover a greater sum than the value which he has placed upon them, the reason for this exception is, that to charge the carrier with their real value, when by the owner's misrepresentation he has been induced to undertake the employment at a reduced compensation and to lessen the degree of care and vigilance which he otherwise would have exercised, would be to sanction fraud and to enable the owner to gain an unfair advantage over the carrier through his own misrepresentation. The knowledge which the carrier has of the real value of the goods tendered to him for shipment would therefore seem to be material in determining the effect of the valuation agreement upon his liability, although a contrary conclusion has been reached by some courts. And it may be stated as the better rule that where the value agreed upon is so out of harmony with the ordinary values of similar kinds of goods as to indicate that the question of value did not, in fact, enter into the agreement, and the carrier, under the circumstances, must have known of the discrepancy, the agreement placing a value on the goods will be considered as a mere attempt by the carrier to secure a partial exemption from liability, and of no effect in relieving him from the obligation of responding for their real value where his misconduct has occasioned their loss. So in the absence of fraud or concealment on the part of the owner of the goods whereby the carrier has been misled, the valuation agreed upon, it is said, must be reasonable, regard being had to the real value of the goods; and if such value be unreasonable, the owner will not be estopped from claiming damages on the basis of their real value.

The great bulk of authority is clearly in accord and at the same time in perfect harmony with *Hart v. Pennsylvania R. R. Co.* See *Scruggs v. Baltimore, etc., Ry. Co.*, 5 McCrary, 590, 18 Fed. Rep., 318; *Ormsby, v. U. P. R. R. Co.*, 4 Fed. Rep., 706; *Judson v. Western R. R. Corporation*, 6 Allen, 88; *Adams Express Co. v. Stettaners*, 61 Ill., 184; 13 I. C. C. Rep.

Ga. Pacific Ry. Co. v. Hughart, 90 Ala., 36; *Ullman v. C. & N. W. Ry. Co.*, 112 Wis., 150; *Railway Co. v. Sowell*, 90 Tenn., 17; *Rosenfeld v. Peoria, Decatur & Evansville Ry. Co.*, 103 Ind., 121, 53 Am. Rep., 500; *Western Railway Co. v. Harwell*, 91 Ala., 340; 4 Elliott on Railroads, 2336; 14 L. R. A., pp. 434, 435, note; Hutchinson "Carriers," volume 1, section 427, and cases cited.

In the case of *B. & O. S. W. Ry. Co. v. Voight*, 176 U. S., 507, we find this concise summary of the law:

Upon these principles we think the law of to-day may be fairly stated as follows: 1. That exemptions claimed by carriers must be reasonable and just, otherwise they will be regarded as extorted from the customers by duress of circumstances, and therefore not binding. 2. That all attempts of carriers, by general notices or special contract, to escape from liability for losses to shippers, or injuries to passengers, resulting from want of care or faithfulness, can not be regarded as reasonable and just, but as contrary to a sound public policy, and therefore invalid.

From these words it would seem to be clear that the law will not permit a carrier to stipulate against the consequences of its negligence, either wholly or in part. A stipulation can not attain validity merely because it appears in the guise of a fictitious agreed valuation.

But if there were room for any difference of opinion on this point prior to the enactment of the Hepburn Act, the passage of that measure has removed all uncertainty. The act expressly invalidates all stipulations designed to limit liability for losses caused by the carrier. Irrespective of a contract or notice limiting the amount of recovery, the carrier can not escape liability for full value in event of loss due to its own negligence or other misconduct, *except* in the single instance where the shipper has misled the carrier by his misrepresentation or concealment of value and estopped himself from recovering more than the value he has disclosed.

We entertain no doubt as to the legal strength of these conclusions, and it is a source of satisfaction to us that they are in accord with public policy and the dictates of justice. Public policy forbids that a carrier should escape the consequences of its negligence. If public policy is opposed to stipulations designed to secure *entire exemption* from such responsibility, the same public policy is opposed to stipulations providing for *partial exemption*. But it is obvious that a carrier may lawfully establish a scale of charges applicable to a specific commodity, and graduated reasonably according to value. The cost of carriage is not the only element in the carrier's charges—a carrier is subject to a certain insurance liability. It would seem proper, therefore, that when its insurance risk is enlarged by reason of increased value of the goods intrusted to it, it may provide for a reasonable increase in its charges. We hold that it is in contra-

vention neither of the letter nor the spirit of the law for the carrier to provide a higher rating for goods of special value than it applies to goods of the same class but of lower value. If it enforces its tariffs in good faith, endeavoring to give to each shipment the rating which its value requires, the law affords complete protection against the frauds and misrepresentations of the shipper. But if the specified valuation is fixed by the carrier without reference to the real value, whether with or without collusion on the part of the shipper, liability for the full value can not be escaped in event of loss due to negligence.

The question of liability for loss occurring on connecting lines is outside the scope of our present inquiry. Consideration of that problem is unnecessary in order to determine the validity of "released rates," and we therefore refrain from taking it up at this time. It is, however, proper to call attention to the fact that in the recent case of *Smeltzer v. St. Louis & San Francisco Railroad Company*, 158 Fed. Rep., 649, the circuit court of the United States for the western district of Arkansas upheld this clause of the law in its entirety, and refused to give effect to a stipulation of the carrier that it should not be held liable for the negligence of its connections.

Our conclusions are as follows:

I. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.

II. If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.

III. If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value—

a. The stipulation is valid when loss occurs through causes beyond the carrier's control.

b. The stipulation is valid, even when loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith.

c. The stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value.

d. The stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount.

All tariff or classification rules or regulations which attempt to state, or which involve, any of the conditions or principles herein discussed should be constructed clearly in the light of these conclu-

sions, and any such rules or regulations now existent which are not so constructed should be promptly revised.

In many informal complaints we are presented with the question whether the shipper can be charged with the duty of advising himself of all the conditions under which the carrier's rates are tendered, or whether he may plead ignorance of the contents of tariffs, receipts, or bills of lading. The act to regulate commerce requires carriers to publish, post, and file rate schedules containing all their charges for transportation. It makes the charges so published the only lawful charges, and prohibits both carriers and shippers from departing in any respect from the terms thereof. The Supreme Court has definitely decided that the rate so published and filed must be rigidly adhered to irrespective of the fact that the carrier's agent may have quoted or tendered a different rate. The carrier occupies a position of strategic advantage with respect to matters of transportation. The tariff rules and regulations are of its own making; the bills of lading and shipping receipts are drafted by its own attorneys. The shipper, on the other hand, has no such vantage ground. It can not be expected that he will always be familiar with the terms of the carrier's rate schedules and bills of lading, or that he will invariably know his legal rights. Practically he often has no choice but to accept the terms that are offered him. As the Supreme Court put it in the case of *New York Central Railroad Co. v. Lockwood*, *supra*:

The carrier and his customer do not stand on the footing of equality. The latter is only one individual of a million. He can not afford to higgie or stand out and seek redress in the courts. He prefers, rather, to accept any bill of lading, or sign any paper the carrier presents, often, indeed, without knowing what the one or the other contains.

This being so, it is essential that the carrier's dealings with the shipper should be free from suspicion of unfairness or imposition of any description. Much of the friction that has developed between the public and the railroads in this regard is due doubtless to the fact that shippers, at the time of tendering their property for carriage, are not clearly advised of their rights, and do not understand fully the nature of the receipt which they sign. In the ordinary course of business few shippers are well informed as to the carrier's regulations. Many shippers are in ignorance of the different rates; are given bills of lading providing for limited liability, and become aware of the limitation clause only when a claim for damages is presented. It is, therefore, peculiarly the duty of the carrier's agents to give every reasonable assistance to shippers, in order that they may know what are the lawful and most advantageous terms upon which the carrier's services may be secured. The provisions of tar-

iffs and bills of lading should be fair and unambiguous, and free from suspicion of illegality. The shipper should be allowed his choice of rates which leave the carrier's liability unlimited as at common law, or lower rates based upon such a limited liability as the law sanctions. The rate finally fixed would not then be open to attack upon the ground that it was imposed upon the shipper and that he did not knowingly accept its terms.

Some tariffs have for several years contained the following rule, with perhaps slight modifications:

Release or Owner's Risk: When a reduced rate is given on account of owner assuming risk of carriage as expressed in the tariff or classification, shippers must note "Owner's Risk" or the letters "O. R." on the shipping ticket or bill of lading, or execute a written release of the form prescribed by the carrier.

When class rates governed by Western Classification apply, the class rates herein provided are applicable for freight shipped subject to all of the immunities specified in Rule 4 of Western Classification. On other freight not so shipped an additional charge of 20 per cent will be made.

When commodity rates are conditioned upon "Owner's Risk" or "Release" and the above-mentioned requirement is omitted, it will be understood (unless otherwise provided) that 20 per cent additional shall be charged higher than the commodity rates provided for shipments at "Owner's Risk" or "Released," unless class rates, governed by the Western Classification, make lower rates.

Shipments provided for at "Owner's Risk" are entitled to owners-risk rates when shipped "Released," and shipments provided for "Released" are entitled to released rates when shipped at owner's risk.

Where articles are provided for released to given valuations, the release given by shippers should clearly state the limitation of valuation. When this requirement is omitted, shipments will be subject to an additional charge of 20 per cent.

Rule 4 of the Western Classification provides as follows:

Ratings made in this classification are for shipments made subject to the following conditions:

No carrier or party in possession of any of the property provided for in this classification shall be liable for any loss thereof or damage thereto, from causes beyond its control, or by floods, or by fire, or by quarantine, riots, strikes, or stoppage of labor, or by leakage, breakage, chafing, crushing, loss in weight, changes in weather, heat, frost, wet or decay, rust of metals or metallic goods, escape of bees, live poultry or live fish, tearing, cutting, or soiling of fabrics or paper in bales or bundles, fermentation of liquids, chipping of stone or manufactures thereof, injuries of live animals to themselves or each other, or from any cause to property carried on open cars. Shipments not made as above provided are subject to an additional charge of 20 per cent.

A rule has been carried in the Official Classification for many years to the effect that property shipped not subject to uniform bill of lading conditions will be charged 20 per cent higher than as therein provided, subject to a minimum increase of 1 cent per 100 pounds.

The Southern Classification provides in substance that property not shipped under the conditions of the standard bill of lading will

be charged 20 per cent higher (subject to a minimum increase of 1 cent per 100 pounds) than if shipped subject to the conditions of the standard bill of lading.

Both the uniform and standard bills of lading contain provisions similar to that quoted above from the Western Classification.

It is therefore seen that these rules have existed for a long time. That they have been adhered to or that there has been any general effort to enforce them may well be doubted. But now that tariff rules and regulations are recognized as possessing a sanctity never before possessed, the reincorporation of such rules in tariffs and classifications is a question of much importance.

The practice of basing rates upon the condition that the carrier shall not be responsible for losses due to causes beyond its control has received legal sanction. Similarly we find no impropriety in a graduation of rates in accordance with the actual values of specific commodities. Household goods, for example, differ widely in value, and it is fair to all that the man who ships goods of low value should receive the benefit of a lower rate than the man who ships more expensive goods. Rate-making upon this principle is in every respect legitimate. It is proper to say, however, that the words "Value limited to * * *" are misleading. The phrase "Agreed to be of the value of * * *" recently incorporated into the tariffs of the roads which are members of the Southeastern Freight Association are less objectionable. They are indicative of the theory upon which these rates are justified—they are fixed with reference to the real value of the property, and not because of an agreement that the amount of recovery shall be limited to an arbitrary specified amount. We can not emphasize too strongly our position that these rates must not be used by the carrier as a means for escaping the liability which the law absolutely forbids it to cast off. The same good faith that is required of the carrier is likewise enjoined upon the shipper. The carrier's agent can not always be expected to know the value of the goods that are tendered for transportation. In most instances it must accept the valuation fixed by the shipper; and when the amount so specified is accepted in good faith and made the basis of the transportation charges, the law will not require the carrier to respond in damages to a greater amount.

We are not to be understood as suggesting a general revision of rates, for such revision is not necessary in order to conform to these views. But we should not hesitate to express our disapproval of tariff rules that are ambiguous and misleading, and to a certain extent incapable of enforcement. Rule 4 of the Western Classification, quoted above, would be unobjectionable if it went no further than to absolve the carrier from liability for loss due to causes beyond its control.

The carrier could not, however, escape responsibility for losses due to many of the causes catalogued therein if its negligence were the legal cause of the damage. The carrier must know, too, that the courts will not give full effect to stipulations that there shall be no liability for losses "from any cause to property carried on open cars." Again, the stipulation that "shipments not made as above provided are subject to an additional charge of 20 per cent" is unreasonable. A certain differential between rates which leave the carrier's liability unlimited and rates which provide for a limited liability is obviously proper, but the differential should exactly measure the additional insurance risk which the carrier assumes when the liability is unlimited. An increased charge of 20 per cent is manifestly out of all proportion to the larger risk involved, and its virtual effect is to restrict the public to rates calling for limited liability. Herein lies the vice in stipulations of this character. It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law. A revision in the interest of simplicity and fairness, eliminating such provisions as may be open to legal objection, would go a long way toward improving the relations of the railroads and the shipping public.

13 I. C. C. Rep.

No. 1411.

MARSHALL MICHEL GRAIN COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY.

Submitted April 11, 1908. Decided June 1, 1908.

Complainant shipped 2 carloads of bran, milled in transit, from Salina, Kans., to Little Rock, Ark., over defendant's direct line through Coffeyville, and was charged the published through rate, which is higher than an alleged combination of a rate on bran over defendant's line to Kansas City, Mo., plus a proportional rate from Kansas City to Little Rock; *Held*, That under defendant's tariffs there was no combination on Kansas City less than the through rate.

C. W. Durbin for complainant.

James C. Jeffery for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The complainant, engaged in buying and selling grain and its products at Kansas City, Mo., purchased in September, 1906, 2 carloads of bran from a dealer in Salina, Kans., at a delivered price in Kansas City. The bran was not shipped to Kansas City, but upon orders from complainant was shipped to Little Rock, Ark., over defendant's direct line through Coffeyville.

A part of the wheat from which this bran was produced originated at Smolen, Kans., on May 28, 1906, and the balance originated at Falun, Kans., between July 24 and 28, 1906. Smolen and Falun are local stations on the line of defendant west of Salina.

One of the rules published by defendant in its tariff reads as follows:

When the rate upon the product of the grain is lower than the rate upon the grain from which the product is manufactured, the grain rate will be used from point of origin of the grain to final destination.

Under this rule bran, the product of wheat, would take the wheat rate. Other rules provide for milling in transit of grain at certain stations, including Salina, on the line of defendant.

At the time this bran was shipped the rate on wheat, and therefore on bran, from Smolen to Kansas City was 15 cents and from Falun to Kansas City 15½ cents. At the same time there was in

effect a proportional rate on *bran* from Kansas City to Little Rock, Ark., of 12½ cents.

On May 28, 1906, when the wheat from which a part of this bran was made originated at Smolen, the rate from Smolen to Little Rock was 32 cents. Subsequent to July 8, 1906, and during the time when the wheat from which the balance of the bran was made originated at Falun, the rate from Falun to Little Rock was 30½ cents.

It will thus be seen that the rate from Smolen or Falun to Kansas City plus a proportional of 12½ cents from that point to Little Rock would be less than the through rate from either point of origin to Little Rock, and complainant claims that it was entitled to such lower combination on Kansas City instead of the through rate of 32 cents, which was actually charged. Whether or not this claim is well founded is the only question in controversy, as the reasonableness of the through rate is not challenged in the complaint.

Defendant meets this contention by reference to a further rule in its tariff which provides as follows:

Proportional rates named herein must not have the effect of reducing through rate from original point of shipment. When the local rate into reconsigning point (junction from which rates apply, shown herein), plus the proportional rate out, has the effect of reducing the through rate from original point of shipment, the proportional rate must be increased sufficiently to protect the integrity of through rate from point of shipment.

Under this rule, the meaning of which is plain, it is apparent that the proportional rate of 12½ cents from Kansas City to Little Rock was not applicable to the bran in question, because the wheat from which it was produced originated at points taking rates to Kansas City, which, added to the proportional therefrom, would make a combination rate lower than the through rate to destination. In other words, the proportional rate to which this bran was entitled under the tariff then in force was not 12½ cents, but the difference between the through rates to Little Rock and the local rates from points of origin to Kansas City. The rule last quoted was evidently intended to prevent a combination on Kansas City which would be less from any point of origin than the published through rate.

The representative of complainant at the hearing stated that he "expected" to have the benefit of the proportional rate from Kansas City on the shipments in question, and claimed that this proportional rate had been applied on other shipments. But he failed to show any instance where this had been done with the result of securing a combination rate less than the through rate from points of origin. Undoubtedly shipments have been made by complainant from Kansas City on the proportional rate of 12½ cents, but apparently only in cases where the combination on Kansas City was the same as

or more than the through rate, since there is no evidence in this record that the defendant has at any time carried traffic on proportional rates in disregard of its tariff provisions.

As above stated, the bran in question was transported via Coffeyville and charged a rate of 32 cents. This was an error as to a part of 1 carload, as the through rate from Falun was only 30½ cents. If the bran had been shipped to Kansas City on the local rates and then reshipped to Little Rock upon the proportional rates applicable when the wheat originated at Smolen or Falun, the combination rate by that route would also have been 32 cents from Smolen and 30½ cents from Falun.

This would be so upon the assumption that the proportional rates on bran were applicable to the shipments in question, but it appears from the rule first above stated, to the effect that the product rate must not be less than the grain rate to destination, that the only proportionals applicable from Kansas City, if any, would be the proportionals on wheat. Prior to July 8, 1906, the proportional on wheat was 17 cents and after that date 15½ cents. These proportionals added to the locals into Kansas City would give a combination rate of 32 cents from Smolen and 31 cents from Falun, which are not less than the through rates actually charged.

Moreover, it is doubtful whether any proportionals are applicable on these shipments, in view of the fact that the wheat from which this bran was milled had already received the milling-in-transit privilege at Salina, and the rule of defendant seems to exclude the reconsignment rate when the milling-in-transit privilege has been enjoyed.

It thus appears that the rates charged upon these 2 carloads of bran were in strict accordance with defendant's tariff, except for the error mentioned, and that complainant is mistaken in supposing that there was a lower combination via Kansas City. Not only were the through rates the only lawful rates, as the Commission has repeatedly held, but those through rates are not greater than the locals to Kansas City plus the proportionals applicable therefrom when Smolen and Falun are the points of origin. As there is no allegation or proof that these through rates are unreasonable, we must hold that the defendant is entitled to a dismissal of the complaint.

As above stated, however, an error was made in charging 32 cents on both these shipments. That was the through rate from Smolen, but the through rate from Falun subsequent to July 8, 1906, was 30½ cents. This error resulted in an overcharge on 1 carload of \$8.04, which the defendant stated it was ready to refund, although not embraced in the complaint, and which it should refund without an order, because in excess of the published rate.

An order will be entered accordingly.

No. 1187.

ROMONA OOLITIC STONE COMPANY

v.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY.

Submitted May 18, 1908. Decided June 2, 1908.

Decision of the Commission in the similar case of *Romona Oolitic Stone Company v. Vandalia R. R. Co.*, 13 I. C. C. Rep., 115, adhered to, and defendant carrier ordered to desist and refrain from showing purported weights upon its billing until such weights shall have been ascertained either by weighing or by some fair method of computation from cubic contents.

Walter Kessler for complainant.

G. W. Kretzinger for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The issues presented in this case are identical with those in *Romona Oolitic Stone Co. v. Vandalia R. R. Co.*, 13 I. C. C. Rep., 115. Complainant, an Indiana corporation, engaged in quarrying stone at Romona, Ind., and in shipping the same to its customers in various states, asks that the Commission order the defendant to cease and desist from its present practice of billing carload shipments of stone at the marked capacity of the cars. It also asks that defendant be ordered to bill said shipments at the published carload minima of the cars used.

In *Romona Oolitic Stone Co. v. Vandalia R. R. Co.*, *supra*, the Commission, in response to a like complaint against the Vandalia Railroad Company, declined to order the carrier to make billing at the carload minima, saying:

It is evident that this would be quite as unjust and quite as unreasonable as the present practice of billing at the marked capacity of the cars.

In that case, therefore, the carrier was ordered to cease and desist from indicating upon its waybills the weight of interstate carload ship-
13 I. C. C. Rep.

ments of stone from Romona, in the state of Indiana, until such weight should have been determined, either by actual weighing or by estimation according to fair and reasonable rules in cases where actual weighing might be impracticable. The same conclusion follows in this case, the facts being practically identical with those in the Vandalia case and the principle to be applied being the same.

In its brief defendant insists that the rule laid down in the Vandalia case will either compel carriers to have scales at every station or will result in delay in forwarding shipments from nonscale stations until the consent of the shipper to estimated weight may be obtained. It is sufficient to say that a number of extensive railroad systems have for years followed the plan indicated by the Commission of not indicating weight upon the billing until the same shall have been determined either by weighing or by estimation. The undesirable results feared by defendant have not followed.

Defendant's argument that shipments should not be billed at the carload minima for the reason that carriers would be exposed to loss on such cars as were delivered without weighing is, of course, correct. This position was taken by the Commission strongly in the Vandalia case, and is adhered to. Shipments should be billed at actual weight. The practice of billing at a fictitious weight results, in a certain percentage of cases, in the delivery and collection of freight at such weight. In asking that the fictitious weight upon the waybills be made uniformly too low, complainant is asking for an unjust and unreasonable rule. In like manner, in asking that it be allowed to continue to bill at a fictitious weight which is generally too high, the carrier is asking for the continuance of an unreasonable rule. The Commission's order will result in billing at actual weight or not at all, thus insuring collection of freight in the proper amount.

It is fair to say that the number of cars shipped by complainant over the rails of defendant delivered without weighing, on which, therefore, freight was collected to an amount greater than was legally due, seems not to have been so great as stated by complainant. That a number of cars were so delivered and an excessive amount of freight money collected is, however, true. It may be that overcharge claims for this freight have been, or will be, paid to the shipper. The right to make an overcharge claim, however, is not a satisfactory remedy for an unreasonable billing rule, by which the mistakes or carelessnesses of the railway's servants are bound to result in excessive charges to the shipper.

An order will be entered accordingly.

No. 1356.

MACBRIDE COAL & COKE COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY.

Submitted May 1, 1908. Decided June 3, 1908.

1. The Commission may afford relief from the imposition of demurrage charges upon a showing that the complainant has been subjected either to unjust discrimination or to the payment of unreasonable charges. As the record in this case does not warrant a finding of unjust discrimination or unreasonable charges, the complaint is dismissed.
2. If complainant contends that demurrage charges exacted by defendant did not constitute a lawful lien upon the property, and that defendant's action amounted to an unlawful conversion, its action should have been brought before some court of competent jurisdiction and not before this Commission, whose function is to enforce the provisions of the act to regulate commerce and kindred laws.

John G. Hale for complainant.

Nelson J. Wilcox and *Thomas Wilson* for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant is a wholesale dealer in coal and coke with offices in Chicago, Ill. During February, 1907, it shipped 7 carloads of coal from Marion, Ill., consigned to itself at Minneapolis, Minn. The cars reached Minneapolis on various days between March 4 and 18, 1907, via the line of the defendant company. On April 6, 1907, one Billings, the Minneapolis agent of complainant, advised defendant that the said 7 cars of coal had been sold to the Northern Pacific Railway Company, and requested their delivery to that company. Defendant communicated with the agent of the Northern Pacific Railway Company and was informed that that company would accept delivery of the cars only upon condition that all transportation, switching, and demurrage charges thereon were paid by complainant. Defendant thereupon informed complainant that the freight charges upon the 7 cars amounted to \$392.50, the demurrage charges up to April 17 to

\$171, and that upon receipt of the total amount of freight and demurrage charges the cars would be delivered to the Northern Pacific. Complainant sent defendant a check for the amount of the freight charges, but refused to pay demurrage charges, which had accrued subsequent to April 6, the date when disposal orders were given to the railroad company. Defendant refused to deliver the cars without payment of its demurrage charges, and they remained on its tracks until May 11, 1907, when the coal was sold by defendant's Minneapolis agent for \$405. On the date the sale was effected the demurrage charges amounted to \$374, and the difference between this amount and the amount realized from the sale, or \$66.67, was tendered to the complainant by defendant. Complainant refused to accept the tender and filed this complaint, asking for an award of damages in the amount of \$691.53.

Upon what theory this complaint was filed with the Commission does not appear to be very clear, but it may be assumed that the Commission could afford relief upon a showing either (1) that complainant had been discriminated against, or (2) had been subjected to payment of unreasonable charges.

The record does not warrant a finding of unjust discrimination against complainant. The demurrage charge objected to is published in its tariffs, is applied alike to all shippers, and failure to assess charges in accordance therewith would constitute a violation of the statute. If discrimination is claimed because defendant refused to deliver the cars in advance of payment of demurrage charges, while doing a credit business with other shippers of whose financial responsibility it was satisfied, the answer is that complainant refused to pay the demurrage charges accruing after April 6.

Complainant does not challenge the reasonableness of the freight charge, but only the reasonableness of the demurrage charge. No facts have been introduced to show that a charge of \$1 per day for demurrage is unreasonable, and we can not so find. In *Kehoe & Company v. Charleston & Western Carolina Ry. Co.*, 11 I. C. C. Rep., 166, a similar charge was found to be just and reasonable. It follows that the complaint must be dismissed and an order will be entered accordingly.

If complainant's contention is, as it appears to be, that demurrage charges did not constitute a lawful lien upon the property, and defendant's action amounted to an unlawful conversion, its action should have been brought before some court of competent jurisdiction and not before this Commission, whose function is to enforce the provisions of the act to regulate commerce and kindred laws.

No. 1091.

J. H. LEONARD

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY AND KANSAS CITY & WESTPORT BELT RAILWAY COMPANY.

Submitted December 2, 1907. Decided May 12, 1908.

1. Under the act to regulate commerce, as amended June 29, 1906, a carrier by railroad operating entirely within a state becomes subject to the provisions of the act if it engages in interstate transportation, although it has entered into no arrangement with any other carrier by railroad or water for the movement of traffic between points upon its line and points without the state.
2. The movement of freight from a point in one state to a point in another state by rail must be regarded as an entirety and every railroad participating in that movement thereby becomes subject to the act to regulate commerce even though its service is performed entirely within a single state.
3. Under the circumstances stated in the report the Kansas City Southern Railway should give to the complainant the benefit of the \$3 switching charge which it absorbs when delivery is made to a connection for switching purposes within the switching limits of Kansas City, although in this case the delivery to the Belt Railway is without such switching limits.

C. W. Durbin, J. H. Sutton, and J. T. Burney & Son for complainant.

S. W. Moore and F. H. Wood for Kansas City Southern Railway Company.

J. H. Lucas for Kansas City & Westport Belt Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant is a coal dealer having retail yards located at various points in Kansas City, Mo., one of which is in what was formerly Westport, Mo., but is now a part of Kansas City.

The Kansas City & Westport Belt Railway, hereafter called the Belt Railway, extends from Westport to Dodson, Mo., a distance of about 9 miles, of which $1\frac{1}{2}$ miles are within and the balance without the limits of Kansas City.

The Kansas City Southern Railway runs through Dodson to Kansas City. In fact, Dodson is located upon the tracks of the St. Louis &

San Francisco Railroad, but the Kansas City Southern possesses such running rights over the tracks of the St. Louis & San Francisco that for the purposes of this discussion they may be regarded as those of the Kansas City Southern itself.

The Kansas City Southern Railway Company maintained from certain points in Arkansas, which may be taken as illustrative of the general situation, during all the period covered by this controversy, a rate of \$2 per ton upon coal to both Kansas City and Dodson. During this same period the Kansas City Southern has at all times absorbed switching charges at Kansas City not exceeding \$3 per car in amount. The tariff naming such absorption has provided that such switching charges would only be absorbed within the switching limits of Kansas City when delivery was made to the connections of the Kansas City Southern within such limits. Dodson is not and never has been within those limits. The St. Louis & San Francisco Railroad Company has a line of railway extending from a connection with the Kansas City Southern within the switching limits of Kansas City to Westport, and carloads of coal originating upon the Kansas City Southern might at all times covered by this discussion have been transferred via that line from the Kansas City Southern to Westport, in which event a switching charge of \$3 per car would have been absorbed according to the tariff of the company, provided the charge of the St. Louis & San Francisco equaled or exceeded that amount. This route has not, however, been open to the complainant for the handling of his business, since his coal yard at Westport is so located that if shipment were made by the St. Louis & San Francisco the coal must be unloaded and carted up a steep hill at heavy expense. The distance from Dodson to Westport via this route is some 17 miles, as against 9 miles via the Belt Railway.

Before the complainant located his coal yards at Westport he was importuned by the officials of the Belt Railway to do so for the purpose of giving that railway the handling of the coal from Dodson, and he finally entered into an agreement with that company for the transportation of his coal in carloads from Dodson to Westport at 20 cents per ton, and located his coal yards where they now are upon the strength of that agreement.

The complainant established his yard in Westport during the latter part of the year 1904, since when he has brought over the Kansas City Southern and Belt Railway via Dodson from various points without the state of Missouri some 200 carloads of coal under the following course of business:

The coal is marked for the complainant at Westport via Dodson. The shipping receipt issued by the defendant in case of its own line or by its connection where the shipment originates upon a foreign line

specifies Westport as the ultimate destination. The car is way-billed by the defendant and its connection to Dodson. It is transported to Dodson and there placed upon a side track used apparently for this purpose, from which it is taken without further instructions from anyone by the Belt Railway and transported to the coal yards of the complainant at Westport.

The complainant has paid the Kansas City Southern its full tariff rate and received from that company an expense bill to that effect. He has also paid the Belt Railway 20 cents per ton and received a second expense bill from that company. There has been no connection whatever between the two companies in the payment of the freight.

The cars in which the coal has been brought to Dodson have gone through to the yard of the complainant at Westport under an arrangement between the Belt Railway and the Kansas City Southern that the Belt Railway should receive the use of the cars free for five days and should thereafter pay to the Kansas City Southern the sum of 25 cents per day for the use of the same. The officials of the Belt Railway testified that the complainant was entitled to the same free time which was allowed elsewhere in Kansas City for the unloading of his coal, and was supposed to pay demurrage at the rate of \$1 per day for any overtime; but that in point of fact, although he had at times failed to discharge cars within the free time, he had never paid any demurrage.

The Kansas City Southern had in effect at the time of the hearing a tariff providing that it would absorb upon carload shipments of coal and lumber destined to points upon the Belt Railway \$3 per car, and a tariff to this same effect had been in force during all the period covered by this controversy. Under this tariff the Kansas City Southern had paid to the Belt Railway upon all the shipments of coal of the complainant the sum of \$3 per car, but this company had declined to pay over to the complainant the amount thus received by it, and one purpose in bringing this complaint was to recover of the defendants or one of them this sum of \$3 per car. It was stated by counsel for the Belt Railway upon the hearing that while that company admitted no legal obligation to pay to the complainant this sum so received by it, it did seem upon the facts that there was a moral obligation to this effect and that the company would make payment to Mr. Leonard with respect to the past. Thereupon the complainant stated that he would ask no order of the Commission as to the past.

The Kansas City Southern Railway Company, however, stated that it would not in the future allow this \$3 per car upon shipments of coal intended for Westport, and the Belt Railway also stated that

if the allowance were made it would decline for the future to give to the complainant the benefit of the same. The complainant insists that he ought under the circumstances to get in some way the benefit of this \$3 switching charge, and asks the Commission to make some order to that end. The question therefore presented looks to the future and is, Can the Commission so exercise jurisdiction over the through rate from the initial point to Westport, or over the separate rates of the Kansas City Southern and its connections up to Dodson and of the Belt Railway from Dodson to Westport as will secure to the complainant this \$3 per car if he is entitled to it?

It is manifest that this Commission might reduce the rate to Dodson by an amount which would equal the present allowance of \$3 per car, but we should doubt the justice of such action. These coal rates to Kansas City are highly competitive and extremely low. A reduction of the Dodson rate might mean the reduction of many other local rates. It would seem evident that we can not reduce the rate received by the Kansas City Southern when the shipment is for Westport without reducing the Dodson rate, nor can we deal with the rate of the Belt Railway at all, except upon the theory that we have jurisdiction over the shipment from the point of origin to the point of final delivery at Westport; and this is the fundamental question presented for consideration.

It appears that by arrangement between the Belt Railway and the Kansas City Southern Railway the cars of the Kansas City Southern, in which the coal is brought to Dodson are allowed to go through to Westport, and the complainant insists that this amounts to an arrangement between these two railways which makes them part of a through interstate line, and that the Belt Railway is subject to the Commission's jurisdiction by virtue of this arrangement. It is doubtful if this should be so held. The Kansas City Southern has insisted on treating its service as a transportation to Dodson and has exacted pay from the complainant at the Dodson rate to that point. The Belt Railway has insisted that its service from Dodson to Westport was a local service, for which the complainant has paid that company at an agreed rate. In so far as possible these two companies have declined to connect the acts of transportation to Dodson and from Dodson. Without deciding that question we shall assume, for the purpose of this discussion, that the Belt Railway has not voluntarily submitted itself to Federal control except in so far as participation in the through movement may have that effect.

The Kansas City & Westport Belt Railway was constructed under a charter which authorized that railway to transact both a freight and passenger business. At first it was operated as a steam railway, equipped with two locomotives and one or more passenger

cars, but without freight cars. Within the past year it has passed under the control of certain traction interests and has been converted into an electric line. To-day its passenger traffic is handled in the ordinary electric street railway car; but it also owns an electric freight locomotive, with which it hauls carloads of freight over its line and which, it was said, could haul from Dodson to complainant's yard at Westport 12 cars of coal, loaded 40 tons to the car.

There are located upon the line of this road some 7 or 8 industries similar to that of the complainant, and the supplies brought into these coal, lumber, and cement yards are taken to those yards in carload lots from Dodson. This Belt Railway was chartered as a freight road, was constructed and is operated for the handling of freight, and we assume that if a carload of freight were presented to it at Dodson to be hauled as a local proposition from Dodson to Westport it would be its legal duty to receive and transport the car upon reasonable charges.

When it transpired upon the hearing that the real question was to concern the future and not the past, the complainant asked to amend its complaint so as to pray for the establishment of a joint through rate over the lines of the Kansas City Southern and the Belt Railway upon coal from points without the state of Missouri to Westport. The complaint was so amended and the case has proceeded as though such had been the original complaint. Has this Commission, then, jurisdiction to establish over the Belt Railway such a joint rate? Has it jurisdiction with respect to this coal traffic to determine either the entire through rate or the rates which shall be severally applied by the Kansas City Southern up to Dodson and by the Belt Railway from Dodson?

These questions, in our opinion, must be answered in the affirmative. Interstate transportation is interstate commerce. That transportation begins when property is delivered to a railroad in one state for continuous shipment to a point in another state, and it continues until delivery at the point of destination. Every railroad participating in that transportation is subject to the provisions of the act to regulate commerce.

At the outset of this discussion the difference between the jurisdiction of the original act to regulate commerce and that of the so-called Hepburn amendment of June 29, 1906, should be carefully noted. By its terms the provisions of the original act applied to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment." The Commis-

sion held that the words "under a common control, management, or arrangement" applied only to cases where the shipment was partly by water and partly by railroad; but the decisions and intimations of the Federal courts, including the Supreme Court of the United States, were generally to the effect that these words applied to a route composed wholly of railroads as well as to one which was partly by railroad and partly by water. *Interstate Commerce Commission v. C. N. O. & T. P. Ry. Co.*, 162 U. S., 184; *Parsons v. C. & N. W. Ry. Co.*, 167 U. S., 447; *Louisville & Nashville R. R. Co. v. Behlmer*, 175 U. S., 648; *Chicago & Northwestern Ry. Co. v. Osborne*, 52 Fed. Rep., 912; *Tozer v. U. S.*, 52 Fed. Rep., 917.

The significance of this holding is obvious. The railroad located wholly within a state does not transport passengers upon its own line from a point in one state to a point in another state. It was not, therefore, subject to the provisions of the act to regulate commerce unless, by common ownership or control, or by some arrangement, it became part of a line which did handle traffic between the states. Whether a state railroad was subject to the act depended upon whether it had entered into such arrangements with other railroads, and since the making of the arrangement was a voluntary act upon the part of the state railroad, that railroad could exercise its election to be or not to be subject to Federal jurisdiction. Otherwise stated, the jurisdiction of this Commission was not determined by the character of the transportation in which the state railroad engaged, but by the nature of the arrangement under which that business was handled.

As changed by the Hepburn amendment, the provisions of the act now apply to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one state or territory of the United States," etc. The words "common control, management, or arrangement" now plainly apply only to transportation which is partly by railroad and partly by water. With respect, therefore, to transportation entirely by rail the words in parenthesis may be eliminated from the statute. The terms of the act now apply to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad from one state or territory in the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia." Under the present act the test of jurisdiction is not the arrangement under which the freight is handled, but rather the character of the transportation itself. The plain language of the act subjects any carrier which engages in the

movement of freight by rail from a point in one state to a point in another state to its provisions.

This must be so unless that portion of the transportation conducted entirely within a state is not to be regarded as a part of the entire through movement. The question really is, Is the movement from beginning to end to be treated as one entirety, or can it be split up into separate movements which are only subject to the act to regulate commerce when performed under some arrangement which makes the carrier part of a through line over which the traffic moves? Both upon authority and upon principle the movement must be treated as an entirety, every part of which is subject to Federal control.

While the Supreme Court of the United States had been called upon to define and apply the commerce clause of the Constitution in many of its most important decisions, the exact question presented here was not passed upon until the case of *The Daniel Ball*, 10 Wall., 557, decided in 1871. The *Daniel Ball* was a steamer plying upon the Grand River between Grand Haven and Grand Rapids, Mich. Its entire voyage was within the state of Michigan. The principal part of its business originated and ended in that state. It formed part of no continuous line either in connection with other vessels or with any railroad. It did, however, transport packages from Grand Haven to Grand Rapids which had come from points without the state of Michigan destined to Grand Rapids, and it also transported packages from Grand Rapids to Grand Haven which were marked for and destined to points in other states. The question was whether the transportation of this merchandise was so far interstate commerce as to subject this steamer to the regulating power of Congress.

It was urged in argument that this vessel was entirely a state affair; that its business was entirely state business, and that the Federal Government had no right to lay its hand upon an agency of the state, occupied entirely within the state, even though it might happen that certain articles of freight had come from or were destined to points without the state. The language of the court, in answer to this contention, is decisive of the case before us, and is:

There is, undoubtedly, an internal commerce which is subject to the control of the states. The power delegated to Congress is limited to commerce "among the several states," with foreign nations, and with the Indian tribes. This limitation necessarily excludes from Federal control all commerce not thus designated and, of course, that commerce which is carried on entirely within the limits of a state, and does not extend to or affect other states. *Gibbons v. Ogden*, 9 Wheat., 194. In this case it is admitted that the steamer was engaged in shipping and transporting down Grand River, goods destined and marked for other states than Michigan, and in receiving and transporting up the river goods brought within the state from without its limits; but inasmuch as her agency in the transporting was entirely within the limits of the state, and she did not run in connection with, or in continuation of, any line of vessels or railway leading to other states, it is contended that she was engaged entirely in domes-

tic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other states, or goods brought from without the limits of Michigan and destined to places within that state, she was engaged in commerce between the states, and however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one state, and some acting through two or more states, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress.

While railroads had not, when this case was decided, reached that point in development or importance which they have since attained, transportation by rail was already the most important of any form. The effect of the decision upon the regulation of railroads was urged upon the attention of the court. It was said that if Congress had power to regulate this steamboat then it might regulate every railroad operating entirely within the borders of a state to the exclusion of the control of the state itself. Every railroad, it was urged, carrying a bag of grain or a barrel of fruit destined to a point without the state of Michigan was subject to the supervision of Congress and withdrawn from the supervision of that commonwealth. In answer to that argument the court said:

We answer that the present case relates to transportation on the navigable waters of the United States, and we are not called upon to express an opinion upon the power of Congress over interstate commerce when carried on by land transportation. And we answer further, that we are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the states, when that agency extends through two or more states, and when it is confined in its action entirely within the limits of a single state. If its authority does not extend to an agency in such commerce when that agency is confined within the limits of a state, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at the boundary line at one end of a state, and leaving it at the boundary line at the other end, the Federal jurisdiction would be entirely ousted, and the constitutional provision would become a dead letter.

While, therefore, the court expressly declined to give an opinion as to the power of Congress over railroads engaged in interstate commerce, it did decide the question before us. That question is, Is an agency of transportation operating entirely within the limits of a state subject to Federal control because it participates in an interstate movement of freight, or is the service of that agency to be characterized, not by the entire movement in which it participates, but by the extent of its own operation? The court held that the entire movement must be regarded, and that every agent engaged in that movement thereby became subject to Federal control. If, therefore, Congress has control under the commerce clause of the Constitution

of railroads engaged in interstate traffic, it must follow that every carrier by rail which participates in an interstate movement by rail becomes thereby subject to the act to regulate commerce. Since the entire act rests upon the assumption that Congress does possess this authority, we assume, without discussion, that fact.

In *Wabash, etc., R. R. Co. v. Illinois*, 118 U. S., 557, this question was again presented. The Supreme Court of the United States had decided in the Granger cases that the several states possessed the right of prescribing the rates at which passengers and property should be transported by the railways within their borders, and many states, acting upon these decisions, had established such rates and regulations. The question presented in the above case was whether in the event of a continuous shipment from a point in the state of Illinois to the city of New York that state could determine the rate at which and the regulation under which the traffic should move from the point of origin in the state to the state line. The court held that it could not; that the transportation from point of origin to final destination was entirely subject, as such, to the exclusive control of Congress, with which no state through which the transportation was conducted could interfere. This decision is the more significant because the court, in rendering it, retracted certain expressions used by it in the earlier cases, which, apparently, recognized such right in the state, at least until Congress had acted. The point and reason of the decision appear from the following language:

It can not be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the state might choose to impose upon it that the commerce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the states and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. *Cook v. Pennsylvania*, 97 U. S., 566, 574; *Brown v. Maryland*, 12 Wheat., 419, 446. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the states which was deemed essential to a more perfect union by the framers of the Constitution, if, at every state of the transportation of goods and chattels through the country, the state within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce.

From the reasoning of the above case it must follow that a shipment of coal from the mine in Arkansas to Westport, Mo., is an interstate carriage, and that no state through which it passes can interfere with it by determining the rate or regulation under which it shall move. With respect to such a shipment the state of Missouri could not determine the charge which the Belt Railway should exact for the service, and this for the reason that such charge is subject to the exclusive regulation of Congress.

The doctrine of these two cases, that a shipment from one state to another must be regarded as an entirety, every part of which is subject to the exclusive control of the National Government, has never been departed from and has frequently been recognized.

This question was again presented in a somewhat different form, in *Bowman v. Chicago & N. W. Ry. Co.*, 125 U. S., 465, decided in 1888. Iowa had prohibited the transportation of intoxicating liquors within the limits of that state. Bowman was a liquor dealer in Illinois who tendered to the Chicago & Northwestern Railway a package of intoxicating liquors for transportation from this point in Illinois to a point in the state of Iowa. The railway declined to receive the package upon the ground that by transporting the same it would violate the law of the state of Iowa, and thereupon Bowman brought suit against the railway for failure to discharge its duty as a common carrier. The question was whether the shipment from the point in Illinois to the point in Iowa was to be treated as a continuous shipment with which the state of Iowa could not interfere, or whether that state might interrupt the shipment at the state line and prohibit it beyond that point. The Supreme Court held that the shipment must be treated as an entirety, and that the state of Iowa could not, even in the exercise of its police power, interfere with it.

In *Rhodes v. Iowa*, 170 U. S., 412, the same issue was involved. Rhodes was a station agent of the Burlington Railroad at a point in Iowa. That company had received at a point without the state of Iowa for transportation to this station a package containing intoxicating liquor. This package had been transported by rail to the station and placed by the train crew upon the station platform. Rhodes moved it from this platform, a few feet, into the freight house. He was indicted under the statute of Iowa for transporting intoxicating liquor. In *Leisy v. Hardin*, 135 U. S., 100, the court had held that the sale of liquor in the original package could not be prevented by state statute, and for the purpose of nullifying the effect of this decision Congress had passed the act of August 8, 1890, providing, in substance, that liquor brought into a state should not be exempt from the operation of the laws of that state by reason of the fact that it had been introduced into the state in the original package. The main issue in the Rhodes case was whether this act of Congress applied to interstate transportation as well as to the original package. It was held that it did not and that the interstate carriage of intoxicating liquors was still free from interference by state authority. It was incidentally decided that the act of Rhodes in moving the package from the platform to the freight house was a part of its interstate transportation, and that his conviction under the statute was therefore uncon-

stitutional. The exact point decided in both these cases was that transportation from a point in one state to a point in another state is an entirety and subject to exclusive Federal control from its inception to its final completion. In the Rhodes case, at page 419, he court uses this language:

The fundamental right which the decision in the Bowman case held to be protected from the operation of state laws by the Constitution of the United States was the continuity of shipment of goods coming from one state into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract. This protection of the Constitution of the United States is plainly denied by the statute now under review, as its provisions are interpreted by the court below. The power which it was held in the Bowman case the state did not possess was that of stopping interstate shipments at the state line by breaking their continuity and intercepting their course from the point of origin to the point of consummation.

The same principle was affirmed in a somewhat different form in *McNeill v. Southern Ry. Co.*, 202 U. S., 543. Certain shippers in Greensboro, N. C., owned a private sidetrack extending a short distance from the line of the Southern Railway to their plant, upon which the Southern had been accustomed to deliver carloads of freight intended for consumption at that plant. Owing to some dispute as to the payment of demurrage the railway notified these shippers that on and after a certain day it would no longer make deliveries upon this private track, but would deliver freight consigned to those consignees upon its public team tracks in the city of Greensboro. Thereupon they applied to the railroad commission of North Carolina, which directed the Southern Railway to make delivery of cars billed to this industry upon the private track in the future, as it had in the past.

After the making of this order these parties purchased certain carloads of coal at different points outside the state of North Carolina, which were consigned to them at Greensboro. The Southern Railway transported these cars to Greensboro and placed them for unloading upon its team tracks, and the question presented to the court was whether the North Carolina commission had a right to control the delivery of these carloads of coal.

It was held that the order of the commission was void as applied to those cars which had come from without the state. The court apparently conceded that the state of North Carolina might, through an administrative body, exercise authority, under its police powers, within proper limits, over the time, place, and manner of the delivery of freight which had reached its destination by interstate transportation, but it held that no regulation of the state could be valid which imposed a burden upon interstate commerce, and that this order of

the commission directing the carrier to make delivery of loaded cars upon a sidetrack not owned by it and therefore at a point off its line did impose such burden. This case of necessity holds that these carloads of coal were in process of interstate transportation until they were finally delivered to the consignee; and, manifestly, to admit that the state could exercise any authority over the transportation of this coal which interfered with that transportation would be to admit that the power of Congress did not exist; for if the state could lay hold upon that property and control its carriage, even for a single rod, it might virtually defeat the supervisory power of Congress.

This same subject has frequently been before the courts in the application of the so-called safety appliance act, which provides that railroads "engaged in interstate commerce" shall equip their cars and locomotives with certain appliances and use these in the operation of their trains. One of the latest cases is *United States v. Colorado & Northwestern R. R. Co.*, 157 Fed. Rep., 321, decided November 25, 1907, by the circuit court of appeals for the eighth circuit.

The Colorado & Northwestern Railroad is a narrow-gauge railroad of which the main line extends from Boulder to Sunset, a distance of 10 miles. It is entirely within the state of Colorado. It enters into no arrangement for any through route to or from any point upon its line, but transacts its business, in so far as it can, entirely as a local matter. This railroad transported upon one of its trains a package shipped from Omaha, in the state of Nebraska, to a point beyond Boulder, upon its line, and another package shipped from Kansas City, Mo., to another point on its line. Both these packages were received by the Colorado & Northwestern at Boulder and carried as a part of a continuous movement to destination. The train upon which they were moved was not equipped according to the requirements of the safety appliance statute, and suit was brought to recover the penalties imposed by the act. The defense was that this railroad was not engaged in interstate commerce; that its operation were purely local, and that it did not become subject to Federal supervision by the mere fact that it received at Boulder and transported as a local proposition from Boulder to some point upon its line freight which had in fact come from without the state of Colorado, and which was being carried from such point to destination. The court held that this was a participation in interstate commerce. It said:

Importation into one state from another is the indispensable element, the test of interstate commerce. Every part of every transportation of articles of commerce in a continuous passage from an inception in one state to a prescribed destination in another is a transaction of interstate commerce. Goods so carried never cease to be articles of interstate commerce from the time they are started upon their passage in one state until their delivery at their destination in the other is completed and they there mingle with and become a part of the great mass of property within the latter state.

Their transportation never ceases to be a transaction of interstate commerce from its inception in one state until the delivery of the goods at their prescribed destinations in the other, and every one who participates in it, who carries the goods through any part of their continuous passage, unavoidably engages in interstate commerce.

To the same effect are *U. S. v. P. C. C. & St. L. Ry.*, 143 Fed. Rep., 350; *U. S. v. Great Northern Railway*, 145 Fed. Rep., 438; *U. S. v. Northern Pacific Terminal Co. of Oregon*, 144 Fed. Rep., 861; *United States v. Belt Railway of Chicago*, not yet reported.

Expressions can be found in some opinions of the Supreme Court of the United States and of various Federal courts to the effect that a state railroad operating entirely within a state becomes subject to the act to regulate commerce only by virtue of voluntarily becoming part of a through route for the handling of such commerce; but these expressions all depend upon the phraseology of the original act to regulate commerce, already referred to. As we have already seen, under the interpretation of the Federal courts the original act only applied to state carriers which had by voluntary arrangement become parties to a through line for the transportation of passengers or property from a point in one state to a point in another. The present act applies to all carriers who engage in such transportation, and the uniform course of decision is that the transportation is an entirety and that any carrier engaging in it to the slightest degree thereby becomes subject to the regulating power of Congress.

The case *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403, is relied upon as showing that a service performed wholly within the limits of a state is not subject to the act to regulate commerce, even though it be part of an interstate journey; but the case is not susceptible of such construction. The Hardin Grain Company sold two carloads of corn to Saylor & Burnett, for a certain price, f. o. b. Goldthwaite, Tex. To fill this order the Hardin Grain Company purchased two carloads of corn from the Harroun Commission Company, of Kansas City, which were to be delivered to the Hardin company by the Harroun company, f. o. b. Texarkana, Tex. For the purpose of filling its contract the Harroun company purchased the corn at Hudson, S. Dak., and shipped it via Kansas City to Texarkana. The intent of the Hardin company was to use these two carloads of corn in filling its contract with Saylor & Burnett. It received them at Texarkana because it could fill its contract about 1½ cents per bushel cheaper by shipping the corn to Texarkana upon the interstate rate and reshipping it from Texarkana at the state rate, than by purchasing it at Kansas City and shipping on the interstate rate from Kansas City to Goldthwaite.

The corn was received by the Hardin company at Texarkana, remained there for five days, and was delivered by them to the Texas & Pacific at Texarkana, Tex., for shipment to Goldthwaite.

The Texas & Pacific issued to the Hardin company a new bill of lading covering the shipment from Texarkana to Goldthwaite. The single question presented was whether the shipment from Texarkana to Goldthwaite was state or interstate. The court held that it was a state shipment; that the movement from Hudson, S. Dak., to Texarkana was an interstate movement, but that when the Hardin company received the corn at Texarkana the shipment up to that point was at an end, and when they delivered it to the Texas & Pacific and took out a new bill of lading a new shipment began; that the two shipments were not connected and made one continuous through movement by the fact that the Hardin company may have intended to send forward this corn from Texarkana to Goldthwaite.

There was a legally established rate in effect from Hudson, S. Dak., to Texarkana, Tex., and another rate from Texarkana to Goldthwaite. It was the right of these parties to ship this corn under the first rate from Hudson to Texarkana and take possession of it. It was their right to subsequently ship the same corn from Texarkana to Goldthwaite. There is nothing in the act to regulate commerce which forbids this. This Commission had previously made exactly the same ruling in *Hope Cotton Oil Co. v. Texas & Pacific Ry. Co.* 10 I. C. C. Rep., 696, and it is difficult to see how a different conclusion could have been reached. This was not a device to escape the payment of a published interstate rate, but was a legitimate business transaction upon the basis of existing rates. There is certainly nothing in the case which holds that a shipment from Hudson, S. Dak., to Goldthwaite, Tex., would not be an entirety, subject in all its parts to the control of Congress.

The case before us concerns a railroad less than 10 miles in length, which performs a very insignificant part in transportation between the states. It is urged that Congress can not have intended to lay hold upon this agency of commerce and subject it to the regulation of the Federal act. But there can be no distinction in principle between the short road and the long one, between the railroad which handles but 100 carloads of interstate freight per year and that which transports thousands daily.

The New York Central & Hudson River Railroad extends from Buffalo to New York, 440 miles, entirely in the state of New York. Over it flows a vast volume of commerce between points within and without the state. If it be true that the Kansas City & Westport Belt Railway can entirely exempt itself from Federal control with respect to interstate transportation, the same thing must be true of the New York Central. If this railway can decline to receive interstate traffic at Dodson, the New York Central can decline to receive it at Buffalo. If the rates under which the Kansas City & Westport Belt Railway

handles interstate business between Dodson and Westport are not subject to the control of this Commission, then the rates of the New York Central from Buffalo to New York may be withdrawn from our control. If the state of Missouri can determine the conditions under which freight coming from points without that state shall be carried by this railroad from Dodson to Westport, then the state of New York can determine the terms and conditions upon which traffic received by the New York Central at Buffalo shall be transported to points within the state of New York. To deny the right of Congress to regulate the movement of interstate freight over this 10 miles of railway is virtually to deny its effective power *in toto*.

It is said that this holding compels a railway chartered by the state and mainly devoted to business entirely within the state to subject itself and its operations to the control of Congress. That question is not now before us. This railroad has actually engaged in the transportation of freight in process of movement from a point in another state to a point in the state of Missouri. Whether it is chartered by the state or by federal authority would seem to be immaterial. A railroad performs a public service, and the property invested in its construction and operation is affected with a public use. When the promoters of this railroad built it, they were bound to know that its operations and its charges might be made subject to governmental control, and they must have acted in view of the Constitution of the United States as well as the constitution and laws of the state which gave it being. They were bound to know when they invested their money in this enterprise and undertook to transact the business of a common carrier that their railroad might be required to handle interstate traffic, and that in the handling of such traffic it would be subject to the supervision of Congress. There is no hardship in imposing upon it such supervision to the extent that it engages in an interstate business. We can entertain no doubt that the Commission has jurisdiction to supervise the rates, regulations, and practices under which interstate traffic is handled by this railroad, and to establish through routes and joint rates for the transaction of interstate business over it.

The defendant, Kansas City Southern Railway Company, contends that even though the Commission has jurisdiction over the Belt Railway it ought not, in the present case, to establish a joint rate for the transportation of this coal, for the reason, in the first place, that a satisfactory through route already exists. The Kansas City Southern maintains a rate from these Arkansas points to Kansas City. Westport is within the limits of Kansas City, and for this reason it is insisted that there is already a through route in existence to Westport.

Westport was formerly an independent municipality. If it were such to-day it would not be contended that the rate of the defendant to Kansas City was a rate to Westport. We do not think that the mere inclusion of Westport within the municipal limits of Kansas City changed the situation in this respect. A delivery in one part of Kansas City is not a delivery in another. The fact that no satisfactory delivery can be made by a given line already in existence may be a very good reason for holding that with respect to a particular shipper, or with respect to a certain commodity, the existing route is not satisfactory. A route can not be called satisfactory unless it reasonably accommodates traffic which is entitled to accommodation. We think, therefore, that so far as this objection is concerned no satisfactory route now exists for the transportation of the complainant's coal to Westport.

This defendant still further objects that it ought not to be required to make joint rates and through routes with the Belt Railway, owing to the character of that line. It is, as we have seen, at the present time an electric road engaged mainly in the handling of passengers. It has no freight cars and it does no general freight business.

This objection of the Kansas City Southern appeals to us more strongly than the first. Joint through routes and rates ought not to be forced upon carriers unless there is some substantial reason for it, and we think that the just demands of this complainant can be satisfied without the establishment of a joint rate, at least at the present time.

No question is made as to the reasonableness of the charge of the Belt Railway for transporting coal from Dodson to Westport. No question is made but what the rate of the Kansas City Southern and its connections up to Dodson is reasonable. The complainant only insists that he should be entitled, in the future as in the past, to the benefit of a sum equal to the switching charge which the Kansas City Southern absorbs when performed within the switching limits of Kansas City. In this we think the complainant is correct.

While the traffic is not delivered by the Kansas City Southern to the Belt Railway within the switching limits of Kansas City, the Belt Railway is to every intent a switch road, conveying that traffic from the Kansas City Southern to a point within the switching limits of Kansas City. Traffic conveyed by this route to the yard of the complainant may come into competition with coal shipped into Kansas City and thence transported as a switching proposition by the St. Louis & San Francisco to Westport for the competitor of the complainant. The cost to the Kansas City Southern is certainly no greater where the car is set out at Dodson than where it is taken into Kansas City and delivered over the expensive terminals of the Kansas

City Southern at that point. We think, therefore, that this company ought to give the complainant the benefit of this \$3 switching charge which it absorbs. The tariff of the Kansas City Southern should be modified so as to reduce the freight \$3 per car when carried to a point on the Belt Railway within the switching limits of Kansas City. We do not now decide whether the same allowance should be made when this traffic is handled to points upon the Belt Railway not within the switching limits of Kansas City.

In our opinion the Kansas City Southern should be required to make this allowance only so long as it absorbs switching charges at Kansas City and only to the maximum charge which it absorbs. It hardly seems necessary to make any order in this case, and none will be made at present. Should this suggestion not be complied with, the complainant can call up the case for further action.

It is needless to observe that our holding requires the Belt Railway to publish and maintain the rates under which it handles this coal, and equally needless to say that no steps can be taken in this proceeding to compel such publication or punish for failure to publish.

HARLAN, Commissioner, concurring:

Coal from the mining districts in question may move to Westport, Mo., now within the city limits of Kansas City, over either of two routes, one through Kansas City and the other through Dodson. By the first of these routes the coal is taken into Kansas City by the Kansas City Southern over the rails of the Frisco, and by the latter road from Kansas City to Westport. When so routed the charge from the mines to Westport is \$2 per ton, the Kansas City Southern absorbing the Frisco's switching charge of \$3 per car. If routed via Dodson the Kansas City Southern hauls the coal to that point, which is outside the city limits of Kansas City, and from Dodson it is taken to Westport by the Kansas City & Westport Belt Railway. The complaint involves the latter route only.

Over that route the shipments move from the mines to Westport under a through bill of lading reading "via Dodson." Although this document is referred to in the opinion of the Commission as a shipping receipt, the exhibit attached to the record indicates that it is the standard form of bill of lading, and it is so referred to throughout the record and on the briefs. The car is waybilled, however, to Dodson only. Upon its arrival there it is placed upon a sidetrack specially set apart for cars destined to points on the Belt Railway. As that line is operated by electricity it is assumed that the sidetrack is electrically equipped so as to enable the motors of that company to approach and take the cars so set aside for it. It does not appear to which company the sidetrack belongs. If it belongs or is under lease to the Kan-

sas City Southern, that company must have permitted the Belt Company to equip it in that way and for that purpose. On the other hand, if it belongs to the Belt Railway the Kansas City Southern takes the trouble to set the cars over on the sidetrack of that company where they may be handled by its motors. In other words, it is clear that there is a definite arrangement between the two companies for the interchange of traffic at that point. The record shows that without further instructions of any kind from anyone the Belt Railway takes from the sidetrack the cars containing the complainant's coal and hauls them to Westport, where they are placed on the private track of the complainant. For the haul from the mines to Dodson the Kansas City Southern has published a rate of \$2 per ton, and this amount it collects from the complainant. For the haul from Dodson to Westport the Belt Railway has published no tariff and has not concurred in or been made a party to any tariff published by any other line. But it nevertheless collects from the complainant 20 cents a ton. Two expense bills are made out against the complainant and paid by him, one to the Kansas City Southern and the other to the Belt Railway. The Belt Railway, according to the general agreement among carriers, pays to the Kansas City Southern 25 cents a day for the use of its cars, but under some further understanding between the two roads the per diem does not accrue until after five days of free time. There are other details that might be mentioned indicating an arrangement between the two companies for through transportation. But the important fact, and the one which, in my judgment, suffices to determine the character of the transportation conducted by the two lines, is that the coal moves under through bills of lading from the mines to the complainant's tracks at Westport wholly by rail and without the intervention at any point of any agency other than the two connecting lines, and therefore as one act of transportation between the two interstate points.

Upon facts substantially similar to those above outlined the Commission, in connection both with formal and informal complaints, has time and again held that carriers so conducting the transportation of passengers or property from a point in one state to a point in another are subject to the provisions of the act to regulate commerce as amended and to the jurisdiction of the Commission. In such cases the question presented for examination is simply a question of fact under section 1 of the act, and not one of law requiring the citation of authorities. We have repeatedly required carriers engaged in interstate transportation under such conditions to conform to all the provisions of the act, and have subjected some of them to disciplinary correction for their failure to do so.

As both companies are subject to the jurisdiction of the Commission I concur in the opinion and order of the Commission requir-

ing them to establish through routes between the points in question. The movement from the mines to Westport through Kansas City and thence over the Frisco to destination involves delivery on a team track at Westport, from which the complainant must haul the coal a mile and a half by wagon up a very steep hill to his coal yard. When the movement is through Dodson and thence over the Belt Railway to Westport, the coal may be delivered over a spur track into the coal yard of the complainant. Under these circumstances it does not seem to me that the route through Kansas City can be said to be a reasonable or satisfactory route, and the complainant is therefore entitled to the route through Dodson. But I see no reason why the order should not go further and establish a joint through rate from the mines to Westport, say, of \$2.15 a ton. In this connection it is to be noted that the Belt Railway in the past has failed to publish, as required by law, rates applicable to its portion of the interstate movements in question. In my judgment the Commission ought to take effective hold of the situation disclosed on the record by requiring the two companies to establish through routes and joint rates and to file and publish a tariff schedule therefor. Moreover, as I understand the opinion of the Commission, it proposes without entering any order to permit the Belt Railway to refund to the complainant \$3 a car on its past shipments. While it is true that the Belt Railway has not published a switching charge or its rate of 20 cents per ton, and therefore both charges were unlawful, I can not but think that any rebate paid to the shipper from the rate revenues actually received by it as an interstate carrier ought to be controlled by some definite order of the Commission.

I am not ready to concur in that part of the opinion of the Commission in which the decisions of the courts are cited and discussed. Its intimations, as I understand them, are that the Commission has the power, under the act, by its order to subject a state carrier *in invitum* to the provisions of the act and to our jurisdiction. I can not agree that such is the law. By its very terms the first section of the act applies its provisions and extends our authority only to common carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, from a point in one state to a point in another. It does not permit the Commission to exercise its authority upon a common carrier not so engaged in such transportation. Whether or not we have jurisdiction over a particular carrier is therefore merely a question of fact. To enable us to exercise our functions in a given case the jurisdiction must exist by the voluntary act of the carrier; it can not be created by an order of the Commission. While it is true that the amended act has thrown parentheses around the clause "(or partly by railroad and partly by water when both are used under a common control,

management, or arrangement for a continuous carriage or shipment)," and, as the opinion of the Commission states, has thus confined the application of that phrase to transportation conducted partly by railroad and partly by water, the substance of the phrase is nevertheless embodied in the words "wholly by railroad," and applies to connecting railroads. In order that there may be transportation of passengers or property "wholly by railroad" there must be either a common control or management, or an arrangement, or a practice, or a custom under which there is a continuous carriage or shipment between the interstate points.

It is elementary that interstate transportation, as stated in the opinion of the Commission, is interstate commerce, but it by no means follows that interstate commerce is interstate transportation under the provisions of the act to regulate commerce. The mere carriage of merchandise from one state to another is both interstate commerce and interstate transportation, but such carriage is not subject to the provisions of the act to regulate commerce unless (1) the carriage is by rail or partly by rail and partly by water, and (2) if by rail, it is wholly by rail; and if partly by rail and partly by water, it is conducted under some arrangement for continuous movement. If between the two connecting rail lines, or between the rail line and the water line, some outside agency intervenes, the movement is not wholly by railroad in the one case, or in continuous carriage partly by rail and partly by water in the other case. So far as connecting railroads are concerned a shipment can not be said to proceed between interstate points wholly by railroads unless there is some agreement or understanding, or some practice or custom or act which results in the delivery of the shipment by one carrier to the other, or enables one carrier to get it from the other. Merchandise can not move itself at junction or transfer points. This must be done by the carriers through their employees or such means and instrumentalities as are customarily used by carriers at such points for that purpose. And if any agency other than the rail carriers is necessary, or in good faith intervenes, to complete the interstate movement, the mere fact that the two railroads also take part in the movement of what is interstate commerce will not suffice to give the Commission jurisdiction over either of them if not otherwise within our jurisdiction. And so I say that even under the amended act inclosing the clause referred to in parentheses what was said in *Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific R. R. Co.*, 162 U. S., 184, is still a good definition of interstate carriage "wholly by railroad," namely that—

When goods shipped under a through bill of lading, or in any other way indicating a common control, management, or arrangement, from a point in one state

to a point in another state, are received in transit by a state common carrier, such carrier, if a railroad company, must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce.

And it follows that if the carrier has not voluntarily subjected itself to the provisions of the act by participating in that manner in interstate transportation, no order of the Commission will suffice to bring it within our jurisdiction.

I am requested by the CHAIRMAN of the Commission, and also by COMMISSIONER CLARK to say that they concur in what is here said.

13 L. C. C. Rep.

No. 1344.

NEW ALBANY FURNITURE COMPANY

v.

MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY;
SOUTHERN RAILWAY COMPANY; NEW YORK, NEW
HAVEN & HARTFORD RAILROAD COMPANY, AND BAL-
TIMORE & OHIO RAILROAD COMPANY.

No. 1345.

SAME

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; SEA-
BOARD AIR LINE RAILWAY, AND PENNSYLVANIA RAIL-
ROAD COMPANY.

Submitted March 28, 1908. Decided June 2, 1908.

1. Complainant finding that competitive manufacturing points in similar territory had rate adjustments which gave such points an advantage over complainant in nearly every available market, sought, at the hands of defendants, a rate adjustment that would permit it to enter eastern markets. After a year of negotiation, rates were so adjusted and complainant changed its patterns, methods, etc., at considerable expense in order to manufacture for the market so opened to it.
2. Defendants were unable to agree upon satisfactory divisions of the rates so established, and on that account as well as because of threatened reduction of rates from competitive points, increased the rates from complainant's factory one year after they were established.
3. The rates were low before the increase, but having been established after prolonged negotiations especially for the purpose of permitting complainant to reach a particular market, and in preference to making a readjustment in some other direction or territory, and complainant having adjusted its business thereto, defendants may not by an arbitrary advance in those rates destroy complainant's business, there being no evidence that the rates advanced were less than the cost of service.
4. The greater portion of the advance in rates condemned as unreasonable and unjust under the facts in these cases, and reparation awarded.

R. E. Rowland and C. Lee Crum for complainant.

E. B. Peirce, M. L. Bell and W. J. Buchanan for St. Louis & San Francisco Railroad Company.

W. L. O'Dwyer for Mobile, Jackson & Kansas City Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The above-entitled cases involve the rates on furniture between the same points via the lines of the various defendants, and they were heard on one record and are to be disposed of in one report.

The complainant corporation manufactures furniture at New Albany, Miss., which it ships to eastern and New England points over the lines of the defendants. It alleges that an advance in the furniture rates between the points mentioned, made by defendants in August, 1907, is unjust and unreasonable and unjustly discriminatory. It asks reparation for all amounts paid under the advanced rates in excess of the former rates, and that the former rates be restored. Defendants admit the increase in the rates, but deny that the advanced rates are unjust or unreasonable or that they are unjustly discriminatory against complainant.

New Albany, Miss., is about 80 miles southeast of Memphis, and is located on the lines of the St. Louis & San Francisco Railroad Company and the Mobile, Jackson & Kansas City Railroad Company. Complainant's factory is located on the rails of the latter; but these two defendants have an arrangement under which they charge and pay each other a switching charge of \$2 per car upon business originating upon the rails of the one and forwarded via the line of the other.

Complainant commenced the manufacture of furniture in the spring of 1905, procuring its raw material within 20 miles of New Albany, where it is found in great abundance. Its plant cost \$125,000. Its product was cheap and medium-priced furniture, consisting of bed-room suites, odd dressers, odd beds and washstands, of a pattern that was peculiar to and which it sold in southern territory. Vicksburg, Vaiden, and Greenwood, Miss., Memphis, New Orleans, St. Louis, Nashville, and Atlanta were competitors of complainant for the same trade in the same territory. High Point, Mount Airy, and Winston-Salem, N. C., are furniture-manufacturing points, and were also selling the same class and pattern of furniture in competition with complainant. The factories at those points also manufactured furniture of the same grade and character, but of a different pattern that is peculiar to the eastern and New England trade, which they sold in the latter territory.

Prior to August, 1906, complainant sold its goods in Arkansas, Texas, and in a circumscribed territory in Mississippi, Louisiana, and Alabama. The rates from St. Louis and Memphis to Arkansas and Texas were lower than from New Albany, and those cities, with Nashville and Paducah, had lower rates than complainant in the latter's Mississippi territory. Rates from Vicksburg, Vaiden, Greenwood, and New Orleans into Louisiana, southern Mississippi, and

southern Alabama were lower than from New Albany. The St. Louis rate to the Pacific coast applied from New Albany, but complainant's shipments to the coast were few. The North Carolina points enjoyed lower rates than complainant into Georgia, Alabama, and to parts of northern Mississippi, but to the Pacific coast and into Texas and Arkansas complainant's rate was 9 cents per 100 pounds lower than from the North Carolina points.

The greater part of complainant's shipments were to Mississippi and Texas points and in less than carloads. A dealer desiring a carload wanted it made up of various kinds of furniture, including chairs, bedsprings, and mattresses, and as complainant was not manufacturing all those kinds of furniture it could not establish a carload trade. By reason of the diversity of the furniture interests at the North Carolina points the factories there could make up mixed carloads, the different factories furnishing the different kinds. The dealers in the southern trade, besides buying in small quantities, required long time, and complainant was obliged to have traveling salesmen to take care of the trade in the territory in which it operated. The disadvantages arising from the adjustment of the freight rates, the smallness of the orders, the long time required, and the expense of traveling salesmen made complainant's southern business undesirable, and it sought an adjustment of the rates that would permit it to get into another territory. At that time the North Carolina factories were the only ones manufacturing the eastern and New England pattern of furniture, and complainant found, if it changed its patterns and entered the eastern and New England trade, its only competitors therein would be the North Carolina factories. Furniture from the North Carolina points to that territory was carried under a third-class rate of 49 cents per 100 pounds to New York. From New Albany the classification was the same, but the rate was \$1.09 per 100 pounds, based on Cairo, and complainant asked the defendant St. Louis & San Francisco Railroad Company for an adjustment of the rates to enable it to get into the eastern and New England markets. After negotiations which extended over a year, the St. Louis & San Francisco Railroad Company, with the concurrence of its connections, established the following commodity rates in cents per 100 pounds on furniture in carloads, minimum weight 12,000 pounds, from New Albany to the points named and to other points taking the same rates:

	Cents.
Baltimore.....	55
Boston.....	58
New York.....	58
Philadelphia.....	58

The rate to New York was effective December 11, 1906; the other June 20, 1906.

These rates were made on the basis of the 49-cent rate to New York from the North Carolina points, thus giving those points the same 9-cent differential on that traffic that complainant enjoyed on shipments to Texas, Arkansas, and the Pacific coast. However, the differential in favor of the North Carolina points was 5 cents to Boston, 10 cents to Baltimore, and 7 cents to Philadelphia. Following the action of the Frisco, the Mobile, Jackson & Kansas City Railroad Company and its connections established the same rates. The other defendants in these cases concurred in these tariffs.

After being given these rates, complainant, at considerable expense, changed its patterns to the kind used only in the eastern and New England trade, and commenced to manufacture for those markets. It immediately found an outlet for its product through a distributing house in New York, which handled its entire output of approximately \$8,000 a month, except small quantities that complainant sold on mail orders. The distributing house had its own salesmen and complainant took its men out of the field. The goods were sold on thirty days' time and all orders were for carloads, and the sale price included delivery at destination. The increased orders, quicker pay, and the lessening of its expense enabled complainant to put its goods into the eastern and New England markets on a small margin of profit, which it hoped to reasonably increase by increasing its output. The capacity of complainant's plant is 20 cars per month, but it has never shipped more than 8 cars per month.

The rates referred to remained in effect until August 29, 1907, when defendant St. Louis & San Francisco Railroad Company with its connections increased them to the following:

	Cents.
Baltimore.....	63
Boston.....	71
New York.....	66
Philadelphia.....	64

At or about the same time the Mobile, Jackson & Kansas City Railroad Company and its connections established the same increased rates. The other defendants in these cases concurred in these tariffs.

These rates are the ones complained of. They are the same in amount as the class rates applying from Memphis and Greenwood to the same destinations. The Greenwood rates had formerly been higher, but they were reduced at the same time that the New Albany rates were advanced. The Greenwood plant was not in operation at time of hearing. When this advance was made the rates from the North Carolina points to Texas and to western points were not changed. The advance in the New Albany rates practically absorbed complainant's entire profit on that business.

The defendants contend that the former rates were unreasonably low compared with the furniture rates from other producing points in that territory, but those other points never have manufactured for or shipped furniture to the eastern and New England markets and Memphis is the only other such point reached by either of the initial carriers from New Albany. It is claimed that the advanced rates are reasonable because they are the same as the Memphis class rates, which are low by reason of water competition. It is admitted, however, that it is not practicable or safe to handle this class of furniture by water and that it is not so transported. Water competition, which in this case is claimed to be lake competition at Chicago reflected in the rates at Memphis, may affect some rates, but that competitive influence is of no particular force in determining a reasonable commodity rate upon a commodity that does not move by water. It is difficult to see how lake rates to or from Chicago can have any controlling influence in fixing rates from Memphis or from New Albany to the points here in question.

It is further claimed that the former rates, based on the divisions thereof going to the initial carriers, were unremunerative. The record shows that the St. Louis & San Francisco Railroad Company voluntarily inaugurated the former rates, which were concurred in by the interested lines, and said rates were at the time considered as being in line with the rates from other producing points. The divisions thereof had not been agreed upon when the rates became effective, and the lines north of the Ohio River would not participate in the business. Defendant St. Louis & San Francisco Railroad Company delivered this traffic at Birmingham, a distance of 171 miles from New Albany, to the Southern Railway or to the Seaboard Air Line, and its division of the through rate for said service was between 7 and 9 cents per 100 pounds, depending upon the line to which it delivered the traffic. The lines east of Alexandria and Hagerstown were allowed 24 cents per 100 pounds, and the remainder of the through rate was given to the intermediate carriers. The Mobile, Jackson & Kansas City Railroad Company in the division with its connections received 10 cents per 100 pounds for a haul of 44 miles and allowed the lines east of Alexandria 14 cents per 100 pounds. The remainder of the through rate was given to the intermediate line, which over that route was the Southern Railway. Out of the advanced rates the St. Louis & San Francisco Railroad Company received 3 cents per 100 pounds, the remainder going to the lines west of Alexandria. The Mobile, Jackson & Kansas City Railroad Company did not participate in a division of the advanced rate, the entire amount thereof going to the Southern Railway. It appears that divisions are procured by agreement and that the divisions secured depend upon the ability of the several carriers to make a

good bargain. The reasonableness or unreasonableness of a through rate is not to be determined by the divisions thereof, and in these cases the canceled rates are to be considered as a whole and not by the divisions received by the respective carriers. The advanced rates must also be justified as a whole and not on the basis of giving to some interested carrier a greater portion for its services.

The rate per ton per mile under the canceled rates was over 11 mills to Baltimore, over 10 mills to Philadelphia, over 9 mills to New York, and nearly 9 mills to Boston. This rate per ton per mile can not be said to be unreasonably low in itself, but the car-load earnings can not be large, on account of the low minimum weight. The volume of business was not great, but complainant might in time largely increase its output.

The defendants further contend that the canceled rates were unreasonably low compared with the rates from the North Carolina points. It is true that the rate per ton per mile from the North Carolina points to Baltimore and Philadelphia is materially higher than from New Albany to those points; but to New York and Boston the difference is not unreasonable, taking into consideration the longer haul from New Albany. Defendants also insist that the differential between New Albany and the North Carolina points on traffic to the eastern and New England points under the canceled rates was entirely too low for the difference in the distances, but they transport furniture from the North Carolina points the same distance to the west under substantially the same circumstances and conditions for the same differential.

The defendants further insist that complainant should operate in the territory naturally tributary to it, but the record shows that the adjustment of freight rates in Mississippi and southern territory was such that it enabled many other points to operate therein at lower rates, and when complainant sought an adjustment of those rates it was advised by the general freight agent of the St. Louis & San Francisco Railroad Company that the rates to the eastern and New England points would be withdrawn unless the effort to adjust the rates in the Mississippi territory was abandoned. Moreover, the complainant established its business in eastern markets upon rates especially arranged for that purpose by these same carriers, and under no compulsion, only one year before the advance was made. Furthermore, no one is obliged to confine himself to the nearest markets. The markets of the country are and should be open to anyone who can reach them under just and reasonable railroad rates.

The record indicates that the St. Louis & San Francisco Railroad Company changed these rates under pressure by other lines threatening to reduce the rates from Greenwood to equal the rates from New

Albany, and that to obviate the lowering of the Greenwood rates the New Albany rates were increased. As before observed, neither of the initial carriers from New Albany reach Greenwood, nor do they publish rates therefrom. This reason for the advance loses its force when considered in the light of the general policy of carriers to disregard the fact that they are establishing lower rates from points on their lines than are enjoyed by points on other lines, when such rates are established for the purpose of carrying a product originating on their own lines that would not otherwise move.

The distances from New Albany to the eastern markets are much greater than from the North Carolina furniture manufacturing points, and reasonable allowance therefor should be made in fixing the rates. We do not discover any necessity for adhering strictly to the 9-cent differential which seems to have been originally adopted. It is not possible to adjust rates so that every town may be a jobbing and distributing point and be on an equality with all jobbers or manufacturers at other points. Certain natural advantages of location must be recognized, and often they are, of necessity, controlling. Competitive conditions between carriers, between producing points and in common markets, must be given due weight. Distance, while in no sense controlling, must be taken into consideration.

It is manifest that the increase complained of was unjust to complainant, and, all things considered, we are of the opinion that rates on furniture of the grade manufactured by complainant, in carloads, minimum weight 12,000 pounds, from New Albany, Miss., to the following destinations and to points taking the same rates should be, in cents per 100 pounds: Baltimore, 58; Philadelphia, 59; New York, 61; Boston, 63.

An order may be entered in accordance herewith, and if the defendants are unable to agree among themselves as to the divisions of these rates, that question may be submitted to the Commission for determination. No defendant in case No. 1345 reaches Boston and therefore rate to that point can not be prescribed in that case.

No evidence was offered to show the shipments made by complainant after the advance in the rates, and therefore no order for reparation can be made at this time. Complainant may submit to defendants, the St. Louis & San Francisco Railroad Company and the Mobile, Jackson & Kansas City Railroad Company, detailed statements of the shipments made via their respective lines under the increased rates. Such statements, when verified by said defendants, may be submitted to the Commission, and if complainant and defendants agree therein as to the amount of reparation due to complainant, orders will be issued authorizing payment. If the parties can not agree as to the amounts due, the question may be brought to the Commission for adjudication.

No. 1056.

RANDOLPH LUMBER COMPANY

v.

SEABOARD AIR LINE RAILWAY; CHESAPEAKE & OHIO RAILWAY COMPANY; BALTIMORE & OHIO SOUTH-WESTERN RAILROAD COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, AND JUDSON HARMON, RECEIVER THEREOF; HOCKING VALLEY RAILWAY COMPANY; NORFOLK & WESTERN RAILWAY COMPANY, AND PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Submitted May 25, 1908. Decided June 2, 1908.

1. The Norfolk & Western Railway reaches from Petersburg, Va., certain Ohio territory, and the same territory is reached by the Chesapeake & Ohio from Richmond, Va., over its own line and that of its connections. The Seaboard Air Line Railway extends from Petersburg to Richmond; Chester, Va., being located upon that line, midway between these two cities. Rates upon lumber from Petersburg, Va., to these Ohio points are the same and have been long established. The Atlantic Coast Line transports lumber from Petersburg, through Chester via Richmond, to these Ohio destinations, in connection with the Chesapeake & Ohio at the rate prevailing from Petersburg; but it applies a higher rate to the transportation of lumber taken up at Chester; *Held*, That in making the higher rate from Chester the carriers did not violate the third or fourth section, since competitive conditions at Petersburg not obtaining at Chester force the rate from Petersburg.
2. The rate from Chester, which is a joint through rate established by the Seaboard Air Line and the Chesapeake & Ohio, should not, however, exceed the rate from Richmond by the full amount of the local from Chester to Richmond.

L. T. W. Marye for complainant.

E. R. Williams for Seaboard Air Line Railway.

C. B. Fernald for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

Ed. Baxter and *S. F. Andrews* for defendants.

13 I. C. C. Rep.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The Atlantic Coast Line Railroad and the Seaboard Air Line Railway both run from Petersburg, Va., to Richmond, Va., a distance of about 20 miles. The town of Chester is situated upon both these lines of railway, midway between Petersburg and Richmond.

Rates on lumber from both Petersburg and Richmond to Columbus and certain defined Ohio territory are 16 cents per 100 pounds. From Chester to these same destinations the rate is 18.3 cents per 100 pounds, being formed by adding to the 16 cents the local rate from Chester to Richmond. The complainant company, which purchases lumber at Chester and is in this manner interested in its transportation from that point to these stations in Ohio, claims that the rate from Chester ought not to exceed that from Petersburg and Richmond for the reason that the Seaboard Air Line, which publishes the rate of 18.3 cents from Chester, transports lumber from Petersburg, through Chester, to these Ohio destinations for 16 cents.

The Norfolk & Western Railway extends from Petersburg to Columbus, Ohio, and names, as the initial line, this rate of 16 cents. The Chesapeake & Ohio extends westerly from Richmond, and establishes with its connections, as the initial line, the 16-cent rate from Richmond. Both these rates are the sixth class rates, which seem to have been the same for many years from both Petersburg and Richmond to the destinations in question. The Seaboard Air Line, for the purpose of participating in business from Petersburg, joins in a rate of 16 cents upon lumber from that point to these Ohio destinations in connection with the Chesapeake & Ohio. Of this rate it appears that the Chesapeake & Ohio receives for its division 14 cents and the Seaboard Air Line 2 cents. The complainant insists that an undue discrimination against Chester, and against it as a shipper of lumber from that point, is worked by the transportation of lumber from Petersburg, a distant point, through Chester, at a lower rate.

It is evident that rates from Petersburg and Richmond are established without reference to the Atlantic Coast Line or the Seaboard Air Line, and that the competition via these routes has not contributed in the present instance to reduce the rate from either Richmond or Petersburg. If the Seaboard Air Line engages in the transportation of lumber from Petersburg to these Ohio points it must carry it to Richmond and there deliver it to the Chesapeake & Ohio, and the rate for which it performs this service must be the same as that via the Norfolk & Western. It follows that the Seaboard Air Line, in

applying the rate of 16 cents to the transportation of lumber from Petersburg to Columbus and other Ohio points through Chester, meets, at Petersburg, competition which does not exist at Chester, and therefore that the rate from the more distant point is made under different circumstances and conditions from that at the intermediate point. Hence, as has been often held both by the courts and this Commission, the mere fact that a higher rate is applied from Chester than from Petersburg does not of itself establish the unlawfulness of the Chester rate.

The real question in a case like this ought generally to be, not whether competition has produced at the more distant point a lower rate, but whether, under all circumstances, the rate from the competitive point fairly ought, in view of the competition, to be lower than that from the intermediate point. So considering the situation before us, we feel that the rate on lumber from Chester may properly be higher than from either Richmond or Petersburg. Lumber from Chester can not reach this Ohio territory without being transported from Chester to either Richmond or Petersburg. This transportation is a short local haul over an independent road, so that the service from Chester, whether via Richmond or via Petersburg, costs distinctly more than the service from either Richmond or Petersburg. The location of Chester is such that lumber produced at that point ought to take a higher rate than when produced at either Richmond or Petersburg, and these defendants are not in violation of law when they impose such higher charge.

We do not think, however, that the rate from Chester, which is a joint through rate, should exceed that from Petersburg and Richmond by the full local from Chester to Richmond. The charge of the Seaboard Air Line for receiving a carload of lumber at Chester and delivering it at Richmond as a local transaction would be 2.3 cents per 100 pounds. The rate from Chester to these Ohio points is at present arrived at by adding this 2.3 cents to the 16 cents which is in effect from Richmond. This, in our opinion, produces too high a rate. It actually costs the Seaboard Air Line less to make delivery of this lumber to the Chesapeake & Ohio at Richmond as part of a through shipment than to make a local delivery upon its tracks in Richmond, and it costs the Chesapeake & Ohio less to receive this lumber from the Seaboard Air Line than as though it were originated by it at Richmond.

Based upon cost of service alone both these companies can afford to take something less as their part of the charge for the through haul than they would receive for rendering the local services. These defendants are also enjoined by the statute to establish through

routes and just and reasonable rates applicable thereto and should recognize, within certain limits, the entire line thus formed as a single line, not adding for the additional haul from Chester to Richmond what might be a fair charge for that service as a local proposition. In our opinion, the rate from Chester to Columbus and other Ohio territory taking the 16-cent rate from Richmond ought not to exceed $17\frac{1}{2}$ cents. We express no opinion as to the proper division of this rate between the Seaboard Air Line and the Chesapeake & Ohio.

An order will be issued accordingly.

13 I. C. C. Rep.

No. 1405.

ANTHONY WHOLESALE GROCERY COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY;
MISSOURI PACIFIC RAILWAY COMPANY; KANSAS CITY,
MEXICO & ORIENT RAILWAY COMPANY; CHICAGO, ROCK
ISLAND & PACIFIC RAILWAY COMPANY; ST. LOUIS &
SAN FRANCISCO RAILROAD COMPANY, AND KANSAS
SOUTHWESTERN RAILWAY COMPANY.

Submitted May 5, 1908. Decided June 2, 1908.

The facts appearing in this case indicate that the differential of 6 cents per 100 pounds in carloads on rice and sugar from points in Texas and Louisiana against Anthony, Kans., as compared with Wichita, Hutchinson, Winfield, and Arkansas City, Kans., is not just and should not exceed 3 cents; and that the rates on other commodities and the class rates should be adjusted on approximately the same relative basis.

F. B. Brooks for complainant.

Thomas R. Morrow for Atchison, Topeka & Santa Fe Railway Company.

James C. Jeffery for Missouri Pacific Railway Company.

John A. Eaton for Kansas City, Mexico & Orient Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is a corporation engaged in the wholesale grocery business at Anthony, Kans., and the complaint is for the most part in general terms to the effect that rates to Anthony from all eastern and southern points on all commodities, in carloads, usually handled in the wholesale grocery business, are unduly high and "prejudicial to dealers at Anthony as compared with the rates on like commodities to Wichita, Winfield, Hutchinson, and Arkansas City, Kans., from the same points of origin. The only approximately specific complaint is as to the rates on rice from Louisiana and Texas points, not specified,

These rates to Anthony are alleged to be 56 cents in carloads, and to Wichita, 45 cents, but they are in fact 45 cents to Anthony and 39 cents to Wichita. It is also alleged in the complaint that sugar from New Orleans could be hauled through Anthony to reach Hutchinson and Caldwell, but the evidence was conclusive that the natural route for this traffic would not be through Anthony.

The complaint failing to specify points of origin, it is impossible to determine whether or not all carriers which should be parties to the proceeding are before the Commission, even as to the transportation of rice. The line of the Missouri Pacific reaches some points in Louisiana at which rice originates, and also Anthony, over its own rails. Attention of the parties was directed at the hearing to the probable insufficient specification of rates, commodities, points of origin, and carriers complained of, as a basis for a lawful order. The defendant, the Chicago, Rock Island & Pacific Railway Company, through its representatives, stated that it would conform to any ruling of the Commission in the case, notwithstanding these defects in the complaint. No objection to proceeding was made by any of the defendants represented at the hearing, and testimony was introduced by all of them.

The rates to Anthony are 6 cents higher on sugar and rice from Texas and Louisiana points than to Wichita and the other Kansas cities above named, 4 cents higher on canned goods from the Mississippi River, and 6 cents higher from the Missouri River than to Wichita and Hutchinson, and 3 cents higher than to Arkansas City and Winfield. Attention was directed by complainant more to these commodities than to any others. The defendants justified the higher rates to Anthony on three grounds.

The first is that Anthony is reached only by branch lines of all the defendants which make the rates to that point. It is on the main line of the Kansas City, Mexico & Orient, but that carrier has no line to any Mississippi or Missouri river or Texas or Louisiana point, it being a line now in course of construction from Kansas City to a port on the west coast of Mexico, and in operation only from near Wichita through Anthony to some point in Oklahoma. The Kansas Southwestern Railway, another line passing through Anthony, is only 40 or 50 miles in length. The testimony was directed mainly to a comparison of the situation of Anthony and that of Wichita and Hutchinson. Anthony is on branches of the Atchison, Topeka & Santa Fe, the Missouri Pacific, and the Chicago, Rock Island & Pacific, while Wichita and Hutchinson are on the main lines.

In the second place, it is urged by defendants that the rates from Texas and Louisiana to Kansas points are governed largely by the rates from Mississippi and Missouri river points to the same desti-

nations, and that for a long time Anthony has borne and should have somewhat higher rates than those to Wichita and the other Kansas towns named, and that the lines from the south have to meet this condition.

In the third place, they set forth that the lines from the Mississippi and Missouri rivers, and some from Chicago, are continuous with their own rails all the way to Anthony, while from the south there is in nearly every case at least two carriers engaged in the through haul.

The complainant admits that the rates to Anthony from the east should be somewhat higher than to Wichita and the other destinations named, but claims that on shipments from the south it should pay no higher rate than they.

Subsequently to the hearing in this case, certain interests located at Wichita, Kans., requested leave to intervene to the extent of being permitted to file a brief in respect to the issues involved herein. Such leave was granted, and brief was filed on May 8, 1908. Interveners join in the petition to the extent that they contend that the present rates applying on sugar and rice to both Wichita and Anthony from Louisiana and Texas points are excessive, but protest against any change in the present relation of rates between Wichita and Anthony on the commodities involved in this proceeding.

The main question involved in this case is as to the relative adjustment of rates. The question as to their reasonableness *per se* is not raised in such manner in the petition, nor is that subject sufficiently covered in the testimony to admit of an expression of opinion by the Commission at this time in respect thereto.

From the testimony it appears that the relation of rates between Anthony, on the one hand, and Wichita and the other points named, on the other, has been governed by the rates from eastern points to those places, respectively, for a long period prior to the establishment of the several strong lines of competition now operating from southern points of production into these Kansas cities. Several years ago, during a period of about eight months, Anthony was given the same rates as Wichita and the other places referred to, but this adjustment was soon discontinued and the differential restored by an increase of the Anthony rates. No definite explanation was given of the reasons for this, but the intimation was that the change to the old basis was brought about by the attitude of carriers from the east.

The question is whether the relation of rates to points in this region west of the Missouri River shall be controlled, no matter what the point of origin, upon adjustments of long ago by the carriers operating lines from the east, regardless of changed conditions. Up to ten or fifteen years ago the towns west of the Missouri River were dependent almost entirely upon carriers leading from the east to

supply them with the commodities used in that section. It was but natural, and apparently not unjust, that the towns farther west should be charged the higher rate from eastern points of origin. However, during the period named, strong lines have been built and are in operation from southern points, carrying into these towns the same commodities that were formerly almost exclusively carried from the east. Some of these commodities, prominently rice and sugar, originate at the southern points reached by the carriers from the south. When these carriers from the south entered this territory they found in effect the basis of rates established by the eastern lines, and have perhaps naturally acquiesced largely in the adjustment as they found it, realizing that if they attempted of their own motion to change the relationship of the rates to the towns in question it would more than likely precipitate a contest with eastern lines. No matter how just it might appear to the southern lines that there should be a readjustment of rates on at least the commodities originating in the south, they might hesitate of their own motion to precipitate the controversy. When an individual or a community claiming to suffer from an improper adjustment of rates makes complaint, the situation must be viewed as it exists at the time of complaint, and present conditions and circumstances must be given due force and effect in establishing the just relation of rates to the places involved. The southern lines are now strong competitors for such articles as rice and sugar to these Kansas destinations.

The following table shows the short-line distances between the points named:

From—	To—	Miles.	Via.
New Orleans.....	Anthony	891	C., R. I. & P.
	Wichita	916	Do.
	Hutchinson.....	963	Do.
	Winfield	887	A., T. & S. F.
	Arkansas City.....	872	Do.
Galveston.....	Anthony	665	C., R. I. & P.
	Wichita	689	Do.
	Hutchinson.....	736	Do.
	Winfield	682	S. L. & S. F.
	Arkansas City.....	672	A., T. & S. F.

The table below shows the distances and routes between the points named:

From—	To An- thony.	To Wichita.	To Hutch- inson.	To Arkan- sas City.	To Win- field.
Kansas City via—	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
C., R. I. & P.....	290	223	224	308	288
Missouri Pacific.....	284	227	274	266	268
A., T. & S. F.....	285	213	219	244	236

These tables show that from southern points of production to Anthony the distances are, on an average, slightly less, and from eastern points somewhat greater than to Hutchinson, Wichita, Winfield, and Arkansas City.

Without going into an extended résumé of all the conditions involved in the handling of traffic from the east and south into the different towns named and the relative expense of transportation to points on branch lines as compared with main-line points, it is probably fair to assume that it is more expensive in many instances, though not always so, to handle traffic to branch-line than to main-line points.

The facts appearing seem to indicate that the differential of 6 cents per 100 pounds in carloads on rice and sugar against Anthony, as compared with Wichita, Hutchinson, and the other places mentioned, is not altogether just and probably should not exceed 3 cents, and that the rates on other commodities and perhaps the class rates should be adjusted on approximately the same relative basis.

This case is another one of several that have recently been presented to the Commission, involving the relation of rates to Kansas points from the east and south, owing to the new condition caused by the increased competition both via new and old lines from southern points of production as well as through the Gulf ports. One of the recent cases decided by the Commission is that of *Johnston & Larimer Dry Goods Company v. Atchison, Topeka & Santa Fe Ry. Co. et al.*, 13 I. C. C. Rep., 388. In that case Wichita maintained that it should have the same rate on cotton piece goods from eastern points as Kansas City. We held in that case that Wichita was entitled to the benefit of its situation with reference to the Gulf ports. So, in this case, although Anthony is somewhat farther west than Wichita, its proximity to the Gulf is entitled to consideration in fixing the relation of rates as between the places here involved.

The Commission realizes that the complaint is not in such form as to warrant the making of a definite order against the defendants upon the basis of the adjustment outlined, and our suggestions are only made in the belief that the carriers will, in view of their attitude at the hearing, see proper to substantially conform thereto. Should they not do so, such further proceedings and hearing may be had as the ends of justice may seem to require.

The complaint will be dismissed without prejudice.

No. 1379.

LA SALLE & BUREAU COUNTY RAILROAD COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

Submitted March 24, 1908. Decided June 2, 1908.

1. Under the circumstances of this case no order can properly be made requiring defendant to publish in its tariffs any allowance for transportation of freight by complainant from and to La Salle Junction, Ill., or to pay complainant allowances for specific service performed between certain dates.
2. When rates are filed and published, carriers must abide thereby. No allowances of any kind not specified in tariffs can lawfully be paid.
3. The power of the Commission to award reparation does not extend to the division of rates between connecting carriers. Claims *ex contracts* are not cognizable by the Commission. It can not, therefore, order the payment of money for services performed, nor for a debt due one carrier from another on account of joint rates for a joint service. Such claims rest upon contract, express or implied. The jurisdiction of the Commission and its authority in this respect are limited to reparation for damages caused by violation of some provision of the act to regulate commerce.
4. Complainant's application for leave to amend its complaint, so as to make it cover establishment of through routes and joint rates from and to La Salle over its line to and from all points over defendant's line, is denied. The Commission does not favor a practice of ingrafting an application for through routes and joint rates onto a claim for reparation upon the basis of that here presented.

Peck, Miller & Starr for complainant.

S. A. Lynde for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainant is a railroad company organized under the laws of Illinois, and owns and operates a railroad extending from La Salle, Ill., to La Salle Junction, Ill., on defendant's line, a distance of about 6½ miles. It is alleged by complainant that its road was completed in 1894; that from that date until January 6, 1902, de-

13 I. C. C. Rep.

defendant allowed and paid complainant \$3 for each loaded car delivered by it at La Salle Junction and the same amount for each loaded car received by it from defendant and handled from La Salle Junction to La Salle; that on January 6, 1902, an agreement was made between them that the allowance to complainant for the transportation of freight between the points named, carried or to be carried over defendant's line, should be 15 cents per ton; that payments were made on the agreed basis until November 1, 1906; that on this date defendant refused and ever since has refused to pay complainant any sum for transportation of certain interstate shipments over its line, and that up to March 1, 1908, there is due complainant from defendant for transportation of freight at the rate agreed upon the sum of \$5,789.64. The prayer of the petition is that a finding be made that the rate of 15 cents per ton for transportation of freight over complainant's line is just and reasonable, and that an order be entered requiring defendant to pay such allowance and to pay the sum due for the transportation of freight from November 1, 1906, to March 1, 1908, on that basis. The case is submitted by the parties on an agreed statement of facts.

It appears that the allegations of the complaint, as above set forth, are admitted by defendant as substantially correct; that complainant is a common carrier, and its road connects with the Illinois Central and the Chicago, Burlington & Quincy railroads at points on its line. It further appears that its road was constructed chiefly for the purpose of furnishing switching facilities for the Matthieson & Hegeler Zinc Company, the works of which are situated on a high bluff above the main portion of La Salle, and that the Chicago, Rock Island & Pacific and Illinois Central roads reach La Salle, but that the tracks thereof are below this plant and for practical purposes are inaccessible to it. Defendant's road does not reach La Salle, and its most direct connection is via the line of complainant.

The Chicago, Rock Island & Pacific Railway, in its amendment 21 to Freight Tariff I. C. C., C-7804, under the heading "Absorption of Switching Charges—Exceptions," publishes the following:

La Salle, Ill.: On shipments to or from Matthieson & Hegeler Zinc Company, from or to competitive points, absorb switching charges not exceeding 15 cents per ton plus Illinois Central switching charge of \$3 per car on traffic yielding net revenue of \$10 per car or more to C. R. I. & P. Ry.

The Chicago, Burlington & Quincy Railroad Company publishes in its tariff I. C. C. 8018, under the heading "Switching charges made by lines on which industries, etc., are located for service to or from junctions with other lines:"

Matthieson & Hegeler Zinc Company, 15 cents per ton, actual weight to or from Hegeler, Ill., where connection is made with C. B. & Q. Ry.

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No provision for an allowance to complainant is made in the tariffs published by the defendant on traffic delivered by it to complainant at La Salle Junction. Where a through rate to La Salle from points on its line is named, payment is made on the agreed basis, but not otherwise. About November 1, 1906, defendant informed complainant that payment to it of 15 cents per ton would not be made on any traffic on which complainant did not name a through rate to or from La Salle, and with respect to which no provision therefor is made in its tariffs.

It appears, therefore, that the purpose of filing the complaint herein is to secure an order from the Commission requiring defendant to publish in its tariffs an allowance to complainant similar to that published in the tariffs of other roads. The Commission is entirely without power to modify the published tariffs of carriers save in the manner prescribed in the act itself. When rates are filed and published, carriers must abide thereby, and no allowances of any kind not therein specified can lawfully be paid. The power of the Commission to award reparation does not extend to the division of rates between the connecting carriers. Claims *ex contractu* are not cognizable by the Commission. It can not, therefore, order the payment of money for services performed, nor for a debt due one carrier from another on account of joint rates for a joint service. Such claims rest upon contract, express or implied. The jurisdiction of the Commission and its authority in this respect are limited to reparation for damages caused by violation of some provision of the act to regulate commerce.

March 26, 1907, complainant filed and published a local switching tariff between lines with which it connects and points on its line, naming a uniform rate of 15 cents per ton. This was not concurred in by the defendant, and its only effect is to make it unlawful for complainant to transport interstate freight over its line except upon payment to it of the published rate. It certainly gives complainant no claim on the defendant for payment of allowances not provided for in the latter's tariffs.

It is clear that upon this showing no order can properly be made in this case requiring defendant to publish in its tariffs any allowance for transportation of freight by complainant from and to La Salle Junction. It follows, of course, that no order can properly be made requiring defendant to pay complainant for such transportation of freight from November 1, 1906, to March 1, 1908.

Complainant, at the hearing, when the agreed statement of facts was submitted, asked leave to amend its petition, seeking in effect, though somewhat indefinitely, the establishment by the Commission of through routes and joint rates from and to La Salle over its line

to and from all points on the defendant's line. The original complaint had reference to allowances both for the future and in the past to complainant for transportation of freight over its line, specifically asking payment for such transportation from November 1, 1906, to March 1, 1908. The amendment presents an entirely different question, i. e., the establishment of through routes and joint rates, involving, of course, divisions thereof. The agreed facts do not constitute a proper or sufficient basis for intelligent and fair action with respect to that question. We do not favor a practice of ingrafting an application for through routes and joint rates onto a claim for reparation upon the basis here presented and which, upon the agreed facts, must in any event be denied.

Since the case was submitted, and under date of April 28, 1908, the defendant, by its general attorney, has filed a statement in which it concedes that the sum of \$3,526.27 is due complainant for services in transporting traffic to and from La Salle Junction, as above described, between the dates named, and expressing its willingness to pay that amount upon order of the Commission. It is also stated that it has no objection to an order requiring joint rates with complainant, and an allowance to the latter of 15 cents per ton as its share of the joint rates, and that action has been taken looking to the establishment of joint rates as prayed for by complainant.

So far as putting into effect tariffs establishing the joint rates referred to is concerned, that is a matter with which the Commission has nothing to do in the first instance. This case, as presented, does not involve the establishment of through routes and joint rates, and no finding with respect thereto can properly be made herein.

With respect to the payment of the amount now conceded to be due complainant from defendant the consent of the parties can not operate to confer jurisdiction on the Commission to make an order for such payment. The liability of defendant, if any, does not arise, so far as here appears, from any infraction of the provisions of the act to regulate commerce, and therefore the Commission is without jurisdiction in the premises. Nor does the record disclose the relation of the shippers or owners of the freight in question to the La Salle & Bureau County Railroad Company sufficiently to afford proper basis for a conclusion as to the propriety of the allowances which have been the subject of negotiation between the parties.

The application to amend the petition will be denied and complaint dismissed.

No. 1395.

CHARLES ENGLAND, TRADING AS CHARLES ENGLAND &
COMPANY,

v.

BALTIMORE & OHIO RAILROAD COMPANY.

Submitted May 16, 1908. Decided June 2, 1908.

On the facts shown of record; *Held*, That the complainant is entitled to recover from defendant \$488.61 as reparation on account of the exaction of unlawful storage and insurance charges at West Fairport, Ohio, on specified shipments of rye.

Joseph Townsend England and John B. Daish for complainant.

Hugh L. Bond, jr., John G. Wilson, William Ainsworth Parker, and Duncan K. Brent for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This complaint was filed to recover of the defendant the sum of \$488.61, the amount of an alleged overcharge on shipments of 50,000 bushels of rye, originating at Manitowoc, Wis., and delivered to the defendant at West Fairport, Ohio, for transportation to Baltimore. The amount claimed consists of two items, one of \$298.18, collected by the defendant for the storage of the rye in its elevator at West Fairport, and the other of \$190.43, which the defendant paid out for insurance upon the rye while so in storage.

The facts are as follows: On October 26, 1906, the complainant, having learned that 50,000 bushels of rye might be had on favorable terms at Manitowoc, conferred, before making the purchase, with an agent of the defendant with a view to its transportation to Baltimore, where the complainant is engaged in business as a dealer in grain. At that time the volume of traffic throughout the country was so large as to tax the resources of all interstate carriers, and the condition of the defendant's car supply was such that it was compelled to advise the complainant's agent that it could give him no assurance of

a prompt movement of the rye to Baltimore. It promised, however, to furnish cars as fast as it could conveniently do so. As the result of the conference the complainant made the purchase and the rye was carried through the lakes from Manitowoc to West Fairport, and there taken into the defendant's elevator on November 17, 1906. On the following Monday, November 19, the complainant requested the defendant to expedite the shipments as rapidly as possible. The first shipment moved out on November 27, and other shipments followed on various dates, as cars could be obtained by the defendant, until January 19, when the last carload went forward. The complainant's claim is for storage and insurance until the last-named date.

Upon the hearing counsel for both parties were under the impression that the defendant, at the time the grain was received by it, had no tariff schedule in effect covering storage and insurance at the West Fairport elevator. An effort was therefore made to supply the supposed deficiency by proof tending to show a custom or understanding in the grain trade with respect to storage and insurance at that point. This testimony was received by the Commission with reluctance and only on the theory that upon a consideration of the whole record it might in some way throw light on the controversy. It now develops, however, that the defendant's tariffs were not silent, as was supposed, with respect to the storage and insurance of grain at West Fairport at that time. The records of the Commission show that on August 29, 1903, the defendant filed a tariff schedule (I. C. C., No. 4381), which became effective on September 1 of that year and was still in effect at the time here involved, covering "insurance and storage on ex-lake grain at Fairport," now known as West Fairport. In substance the tariff contemplated that before making their purchases of grain at lake ports, shippers would make previous arrangements with the defendant as to the time of shipment and the quantity of grain to be shipped, so that the defendant might make its preparations for the necessary car equipment. The tariff refers to such arrangements as "contracts." It provided that the responsibility of the defendant for the grain would not begin until it was actually delivered into the elevator; that when a contract was made before the grain was taken out of the lake vessel into the elevator the grain would be considered "as for immediate shipment" unless otherwise ordered; in such case the defendant undertook to insure the grain at its own expense and to hold it without storage charges until it could conveniently supply cars for the movement; on the other hand, when the shipper ordered the grain to be held in West Fairport he could have free storage for ten days, but insurance for that period was to be charged against him as well as insurance and storage after the ten days; and when the grain was ordered out the rates then in effect were to apply.

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Such being the terms of the tariff then in force, what were the circumstances under which the complainant delivered the grain to the defendant and the defendant received it from the complainant? Was it received for immediate shipment or as a storage shipment? On that point there is a sharp conflict of testimony. The complainant insists that the grain was delivered to the defendant and received by it for immediate shipment. He contends, therefore, that it was held in storage by the defendant only for its own convenience and because of its inability to supply cars to move it; and therefore that the defendant had no right to make any charges against the complainant either for storage or for insurance. The defendant, on the other hand, asserts that it reached a definite understanding with the complainant that the grain was to be received as a storage shipment and not for immediate shipment; and that consequently the complainant was liable for the storage and insurance charges.

If good faith be attributed to all the witnesses who testified, and the record does not warrant us in not doing so, it is apparent that the minds of the parties never met with respect to this transaction. There can be no doubt that the agents of the complainant and of the defendant, in their conference on October 26, 1906, both understood that the grain could not immediately go forward. But a careful review of the whole record leads us to the conclusion that the complainant, desiring the rye as soon as he could get it, understood that the defendant would receive it for immediate shipment—that is to say, for shipment as promptly as it could conveniently supply the necessary cars to move it forward—and that the defendant, on the other hand, understood that the complainant would deliver the grain to it as a storage shipment. Counsel for the defendant admits that on the occasion of that conference nothing was said on either side about storage charges; and the defendant's division freight agent, referring to the same interview, says: "I am frank to say that the question of storage did not occur to me."

In a letter of the same date confirming the oral understanding arrived at between the parties the complainant states:

It is also understood that you do not agree to furnish cars for this grain in any stated time, but that movements will be made as rapidly as conditions will permit.

This statement is a fair definition of the phrase "as for immediate shipment," as understood in the local grain trade and as used in the tariff schedule of the defendant then in force. In explaining the distinction between an immediate shipment and a storage shipment counsel for the defendant on argument stated, what in substance appears in its published tariff, that an immediate shipment was where the grain was intended to go straight through to destination; in such case no delay is involved except for the convenience of the railroad

in providing cars; and any delay therefore is at its expense with respect to storage and insurance charges. In the case of a storage shipment the grain is ordered by the shipper to be held in storage until he gets ready to have it go forward and so orders. There is nothing in the record indicating that the complainant desired the grain to be held in storage at West Fairport, or that he ever so ordered; on the contrary, the whole record indicates his desire to have the rye reach its eastern destination as soon as possible.

In his reply to the letter last mentioned the freight traffic manager of the defendant, under date of October 27, says:

This confirms our agreement to receive the 50,000 bushels of rye at Fairport and movement of the same to Baltimore, as rapidly as conditions permit. * * * It will give us pleasure to do the best possible to get this grain forward, but can promise nothing as to movement.

This expresses with fair precision the obligation of the defendant under its published tariff with respect to a cargo of grain received by it "as for immediate shipment." Without further order from the shipper, which is an essential characteristic of grain received as a storage shipment, the defendant in this letter undertook to move the rye to Baltimore as rapidly as it could supply sufficient cars for doing so. On November 10 the defendant advised the complainant that it would be impossible to move any grain out of West Fairport until January 1, and possibly later, and that "if you can make other arrangements * * * it would suit us very much better to have you so provide." To this the complainant replied on November 13 that he had arranged to ship the rye by vessel from Manitowoc on the 15th, and that a change of plans would therefore be impracticable. The letter goes on to say:

We beg again to state that it is not necessary that this rye be shipped all at one time and that reasonably prompt movement of a few cars at a time is all that is desired.

Then follow other telegrams and letters, all of which, assuming as we do that there was a misunderstanding between the parties at the original personal interview, are entirely consistent with the complainant's theory that the defendant received the grain for immediate shipment—that is to say, as soon as it could furnish the cars. Apparently it was not until November 19, two days after the grain had been taken into the defendant's elevator, that the existence of a misunderstanding on the question of storage charges first clearly developed. In a letter under date of November 24, intended to confirm that interview, the complainant states his understanding that the rye was to be handled without expense to him for storage. To this the defendant replied on November 27, saying:

We can not put any other construction on movement of this rye than that it is a storage and not an immediate shipment lot, consequently subject to conditions governing storage grain.

Without undertaking to analyze in detail all the correspondence between the parties or to examine further the testimony supplementing it, we are satisfied that although the shortage in the defendant's car equipment and the probability that the movement of the rye to destination would be delayed for some time were perfectly understood by the complainant, there was nevertheless no definite and clear understanding between the parties as to whether the grain was to be received by the defendant for immediate shipment or as a storage shipment, as those terms are used in the defendant's published tariff.

As the minds of the parties did not meet with respect to the nature of the transaction, on what theory may we arrive at a solution of the controversy? Rule 2 of the tariff referred to provides that "grain will be considered as for immediate shipment (as promptly as car supply will permit), unless otherwise ordered." In the absence of a definite understanding between the parties as to whether it was to be an immediate shipment or a storage shipment, we think that this rule must be applied. Certainly it can not be said that the complainant desired or affirmatively ordered the grain to be held at West Fairport. And the mere fact that he understood that there would be a delay in getting cars to move the rye out of West Fairport does not of itself justify us in holding that he agreed that the defendant would receive it as a storage shipment and not for immediate shipment. A storage shipment under the rule referred to not only implies an affirmative order by the shipper to hold the grain in storage at West Fairport, but it requires an affirmative order for loading it out of the elevator and moving it forward to destination. Certainly the complainant did not order the grain held in storage, and the record shows that the defendant understood that it was at liberty at any time after receiving the grain to move it out at its own convenience, and without further orders from the complainant.

After carefully considering the whole record we have come to the conclusion that under rule 2 of the tariff and in the absence of a definite understanding between the parties, the defendant must be held to have received the complainant's rye as for immediate shipment; for it is not affirmatively shown to have been "otherwise ordered" by the complainant as provided in that rule. Having received the grain for immediate shipment the defendant was under the obligation, according to the terms of its tariff schedule, to supply cars for the forward movement as rapidly as its convenience would permit, and in the meantime to insure and store the grain at its own expense. This view requires us also to hold that the \$488.61 paid by the complainant to defendant in order to secure the delivery of the grain to him

at destination was an overcharge and must be repaid to the complainant. It is proper to add that the defendant's tariff then in force covering the storage and insurance of ex-lake grain at West Fairport, was not a lawful tariff in that while providing for storage it failed to fix the amount of the storage charges or to establish, by reference to other tariffs or otherwise, any specific basis for estimating the charges. The tariff now in force in that behalf is defective in the same respect and ought immediately to be amended. In its present form the tariff is unlawful.

An order will be entered in accordance with these conclusions.

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No. 1235.

TOPEKA BANANA DEALERS' ASSOCIATION

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; MOBILE & OHIO RAILROAD COMPANY; NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; WABASH RAILROAD COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; UNION PACIFIC RAILROAD COMPANY, AND LOUISVILLE & NASHVILLE RAILROAD COMPANY.

No. 1236.

MISSOURI VALLEY BANANA DEALERS' ASSOCIATION

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; MOBILE & OHIO RAILROAD COMPANY; NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; WABASH RAILROAD COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, AND LOUISVILLE & NASHVILLE RAILROAD COMPANY.

No. 1332.

MISSOURI & KANSAS SHIPPERS' ASSOCIATION

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; MOBILE & OHIO RAILROAD COMPANY; NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY; LOUISVILLE & NASHVILLE

RAILROAD COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, AND MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Submitted May 15, 1908. Decided June 2, 1908.

1. Defendants' rule of assessing charges on the weight of bananas at point of origin instead of on the weight of the fruit at destination is not, under the circumstances of the case, unjust and unreasonable.
2. The fixing of the minimum weight at 20,000 pounds on shipments of bananas from New Orleans and Mobile to points west of the Mississippi River, while assessing a minimum weight of 18,000 pounds to Chicago and points east of the river, does not result in undue discrimination, as it appears that such difference in minima is made to meet competition through Baltimore and that cars of bananas from New Orleans and Mobile are usually loaded from 2,000 to 4,000 pounds in excess of the 20,000-pound minimum.
3. Complaint that section 4 of the act is violated in that a lesser rate is charged on bananas from New Orleans to Burlington, Iowa, than to Kansas City, an intermediate point, is not sustained, as the joint rate quoted via Kansas City is a paper rate on which the traffic does not move, the bananas destined for Burlington moving through St. Louis.
4. Defendants' banana rates from Mobile and New Orleans to Kansas City and adjacent points are not found to be unreasonable.

C. W. Durbin for complainants.

Ed. Baxter and *S. F. Andrews* for Illinois Central Railroad Company, Mobile & Ohio Railroad Company, New Orleans & North-eastern Railroad Company, and Louisville & Nashville Railroad Company.

J. L. Coleman, *T. J. Norton*, and *J. R. Koontz* for Atchison, Topeka & Santa Fe Railway Company.

E. B. Peirce for St. Louis & San Francisco Railroad Company, and Chicago, Rock Island & Pacific Railway Company.

J. C. Jeffery for Missouri Pacific Railway Company.

N. S. Brown for Wabash Railroad Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

W. D. Groseclose for Missouri, Kansas & Texas Railway Company.

H. A. Scandrett for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

These three cases, which were heard together, call in question the rates and practices of the defendant carriers touching the transportation of bananas from the ports of New Orleans and Mobile to

Kansas City, Mo., and adjacent points. The specific matters of complaint are these:

First. That defendants' rule of assessing freight charges on the weight of bananas at point of origin instead of assessing same on the weight of the fruit at destination is unjust and unreasonable.

Second. That the fixing of the minimum weight at 20,000 pounds west of the Mississippi River, while assessing a minimum weight of 18,000 pounds to Chicago and points east of the river, is an unjust discrimination, and that the minimum weight west of the river should be fixed at 18,000 pounds.

Third. That section 4 of the act is violated in that a lesser rate is charged to Burlington, Iowa, than to Kansas City, an intermediate point.

Fourth. That rates on bananas, carloads, from New Orleans and Mobile to Kansas City, Iola, Parsons, Topeka, and Hutchinson, all in the state of Kansas, are unreasonable *per se* and as compared with the rates to other points.

The rates complained of are, in cents per 100 pounds, as follows: To Kansas City, 63 cents; Iola and Parsons, 73 cents, and Topeka and Hutchinson, 80 cents.

Fifth. Reparation is asked on past shipments.

It is necessary to a proper understanding of the issues involved in these cases to present in a general way the method by which bananas reach the various points of final destination in the middle west.

Some years ago there was organized a company, referred to sometimes as the Fruit Dispatch Company and at other times as the United Fruit Company, which has acquired practical control of the banana business reaching the United States through the ports of New Orleans and Mobile. There are some independent firms at each of these ports, but so far as the evidence discloses they do only a very small portion of the total business.

Bananas are imported from two general sections of the semi-tropics. Those entering the eastern ports, such as Savannah and Baltimore, come from Jamaica, Cuba, and other West Indian islands, while those coming to the Gulf ports are almost exclusively from Central America. The bananas produced in these two sources of supply differ in that the latter are much heavier than the former. The boats of the fruit company reach both New Orleans and Mobile, and there the bananas are loaded on special trains which are in waiting and are hurried to final destination on the fastest schedule applied to any freight traffic moving over defendants' lines—a schedule faster than obtains as to many passenger trains. The schedule calls for an average movement of 21 miles per hour, which, with stops for inspection and other delays, requires a train movement in

excess of 30 miles per hour. The average time between New Orleans and Kansas City, a distance of 879 miles, is between fifty-five and sixty hours. About one-third as many bananas are imported through Mobile as through New Orleans. The Illinois Central and the New Orleans & Northeastern are the originating roads at New Orleans, and of these two the Illinois Central does much the larger business and gives especial attention and service to the banana traffic. Out of Mobile the Mobile & Ohio is the originating road. All originating lines through both ports necessarily give substantially the same service and apply the same rates to northern destinations in order to participate in this traffic.

Both roads have made an extraordinary effort to handle these bananas promptly after the arrival of the fruit company's boats and to carry them to destination without the necessity for refrigeration. The Illinois Central has set apart for its banana traffic at New Orleans a wharf owned by the city, which makes a dockage charge for each boat discharging cargoes. To handle the business promptly, the railroad has seven tracks which reach to the wharf, and the train of cars is broken up and placed on these different tracks, so that the loading may proceed rapidly. The ships are unloaded in some instances by an apparatus in the form of an endless belt with pockets, which pass down into the hold of the vessel and then out between the cars, the bananas being taken off of this endless belt as they pass the car into which they are to be loaded. The cars used in transporting bananas must be clean and odorless, and if freight which leaves an odor, such as pork, veal, or cheese, has been moved south therein they have to be thoroughly scrubbed and then set aside in the yards to dry, which process takes several days. False floors are placed in the cars at a cost of about \$5 each, and these floors need frequently to be renewed. The purchaser of bananas in the northern destinations pays for them at the rate of \$2 per 100 pounds, or \$400 per car, based on the weight in the car at the port. One of the conditions upon which sales are made by the fruit company is that "the certificate of the official weigher respecting the weight of the bananas or the fruit in any given cars or shipment at the seaboard shall be final and conclusive upon both parties;" that is, the fruit company and the consignee. The railroad charges are based upon the same weight. It becomes necessary, therefore, to have the cars correctly weighed, and to accomplish this two weighers are designated—one the public weigher of the city of New Orleans, holding a certificate from the New Orleans Board of Trade and bonded to that corporation, who represents the fruit company; the other an appointee of the Southern Weighing Association, who is assigned for this work and who is paid by that association. The cars are taken to the scales and

weighed singly, each car being uncoupled from the balance of the train when on the scales. The empty weight is written on a tag and attached to the car, which is then placed on the banana dock for loading. When loaded the train is again moved to the scales and each car weighed separately, the net weight being thus ascertained. These scales are inspected officially by the city of New Orleans twice a month.

These special banana trains are placed at the wharf upon notice received by the railroad from the fruit company that a ship bearing bananas is expected at a certain time. Sometimes there are as many as five train loads of fruit in a single ship and the trains may leave the wharf at intervals of one hour on the same morning. The bananas are all handled in standard ventilator refrigerator cars (of which the Illinois Central owns 2,800), and by careful ventilation the cost of icing is saved. These cars are gathered at New Orleans ready to be put in service at an hour's notice to move the bananas to the north, because it is essential that they move immediately, and when they begin moving the movement must be continuous or the bananas will "cook," owing to the heat given off by the banana itself. Bananas move north in train loads of 25 or 30 cars. If the train loses time on one division, the train dispatcher is authorized to increase the speed on the next or subsequent divisions in order to make up the lost time, provided it may be done with safety. There is carried with every train at least one messenger (for whom no charge is made), and generally two, one going with the train destined to Chicago and the other to Kansas City when the train is divided at Grenada, a point about 100 miles south of Memphis. Other messengers may be put on parts of trains as they leave the main line north of Grenada, as some of the bananas are destined to St. Louis and points between the Mississippi and Missouri rivers. These messengers are carried free upon the banana trains and are returned on passenger trains without charge.

Cars of bananas leave New Orleans generally unbilled as to destination. The railroad, under an arrangement made with the fruit company, accepts consignment as they proceed upon their northern journey. As the train goes north the cars receive their ultimate consignment, and at Memphis, where the Illinois Central and St. Louis & San Francisco systems meet, the train is generally divided, about 10 cars on an average going over the latter line to Kansas City and beyond and the balance proceeding to the north over the Illinois Central, to Chicago and other points. The St. Louis & San Francisco gives a similar expedited train service to that extended by the Illinois Central and maintains what is known as a banana shed at Springfield, Mo., which is said to have cost \$100,000 and which is used for either cooling or heating the bananas, as may be necessary. No special service

is rendered at the destination points other than to make delivery as expeditious as possible.

With this general survey of the method employed in the handling of this traffic, which over the Illinois Central in the year 1907 amounted to some 14,000 cars, between three and four thousand of which went west over the St. Louis & San Francisco, we pass to consideration of the specific grounds of complaint above set forth.

First. That defendants' rule of assessing freight charges on the weight of the bananas at point of origin instead of assessing same on the weight of the fruit at destination is unjust and unreasonable.

The testimony shows that complainants have weighed a considerable number of carloads of bananas upon their reaching destination, and according to these weights there appears to be a shrinking varying from 200 to 3,000 pounds, or an average of about 600 pounds per car, from the weight upon which the rate is paid. These weights were ascertained by unloading the bananas into wagons and hauling them through the streets to public scales where weight was ascertained. This procedure required many trips from the car to the scales, and no representative of the railroad was present at the time of the weighing. It is manifest that the official weighers' report could only cover the bananas that reached the scales, and necessarily the weight is more or less liable to diminution from many causes. There is no dispute but that bananas actually shrink in weight about 2 per cent between New Orleans and Kansas City, the extent depending entirely upon the length of time in transit. The complainants contend in this regard (1) that the weights are not correctly ascertained at New Orleans, and (2) the complainants should not be charged on the weight at the point of origin because of the admitted shrinkage.

Considering the first of these contentions, the Commission can not perceive how it is practicable to more correctly weigh the fruit than by the method employed at New Orleans, and the fruit is weighed in the same manner at Mobile. How two weighers more independent of each other could be secured is not known. One is practically a direct representative of the consignor from whom the complainants purchase fruit, the other is an official appointed by the Southern Weighing Association, of which the defendants are members. No complaint is made as to the manner of the actual weighing, but it is intimated that the weights are not correctly reported. There was no proof of this, but it seems to have been assumed because of the alleged difference in weights at point of origin and point of destination. While it is possible that these weighers may be corrupted into making false returns, the same is equally true of the weighing at destination. Since these cars are destined to different points throughout the entire country after leaving New Orleans it would be a practical

impossibility for the railroad to have a representative at each unloading point. It is true that cattle are weighed at destination rather than at origin, and this practice is based upon exactly the same reasons that bananas are weighed at point of origin instead of destination. In both cases the weight is ascertained where the cars are concentrated. Cattle originate at local points in the country where there are no scales and are practically all destined to great terminals, such as Omaha, Kansas City, St. Louis, and Chicago, where accurate scales are to be found.

As to the second contention, that an allowance should be made for the shrinking of the bananas, we can not sustain the position of the complainants. It is true that an allowance is made in a shipment of live stock and some other freight, but whether the practice accomplishes any good purpose is questionable. The shrinkage of freight in transit is one of the elements which should be considered in the fixing of the rate. At most the shrinkage is a matter of estimation. And it appears from the testimony on the record that bananas on the road four days shrink almost twice as much as they do when on the road only two days. To be accurate, the shrinkage would be different at different points of destination based upon the distance from the point of origin.

Second. The fixing of the minimum weight of 20,000 pounds west of the Mississippi River, while assessing a minimum weight of 18,000 at Chicago and points east of the river, is an unjust discrimination, and the minimum weight west of the river should be fixed at 18,000 pounds.

As said before, bananas coming through the port of Baltimore originate in Cuba, Jamaica, and the West Indies generally and are much lighter than those coming through the Gulf ports. It is practically impossible to load more than 18,000 pounds of the former fruit in the ordinary car, while there is no difficulty in loading Central American bananas in excess of a 20,000-pound minimum. It is this difference in the weight of the fruit that accounts for the different minima east and west of the Mississippi River, and the minimum from New Orleans to Chicago is made 18,000 pounds to meet the competition through Baltimore. As a matter of fact, the 18,000-pound minimum at Chicago has no effect upon the business from New Orleans. The record shows that of 100 cars from New Orleans to Chicago between September 27, 1907, and January 2, 1908, being all the cars received via the Illinois Central during that period, the average loading was 21,957 pounds. Twenty cars received via the Mobile & Ohio at the same time averaged 21,185 pounds. Complainants in one of their exhibits (offered for the purpose of indicating the difference between the weight at point of origin and the unloading weight) show that out of 32 cars there was not one which weighed under 20,000

pounds. Several of complainants' witnesses inspected the weighing of cars at New Orleans and testified as to three of them that one weighed 22,700, the second 24,900, and the third 23,900.

It further appears that the complainants who buy from the Fruit Dispatch Company have to sign a contract for two years to make all of their banana purchases from that company, and if they buy from any other source such company will refuse to supply them in the future. Every banana dealer placed on the witness stand testified that the Fruit Dispatch Company absolutely controlled the situation and loaded what weight it pleased into the cars regardless of the wishes of the consignees. One witness, being asked, "Have you any explanation of why they (the Fruit Dispatch Company) load these cars heavier than the minimum which they prefer?" said: "No; unless they just want to sell just that much more fruit. They import the fruit and want to sell it and put all they can in the car." Another witness said: "The trust usually takes pains to load them to the minimum and a good deal more, if we don't kick about it."

From this undisputed testimony it appears that the cars are loaded from 2,000 to 4,000 pounds in excess of the present minimum of 20,000 pounds, and that even if an 18,000-pound minimum is prescribed the complainants could not avail themselves of it. It would therefore be idle for the Commission to order a reduction in the minimum.

Third. That section 4 of the act is violated in that a lesser rate is charged to Burlington, Iowa, than to Kansas City, an intermediate point over a through route.

The complaint here is that bananas move from New Orleans through Kansas City to Burlington, Iowa, and that the Kansas City rate is higher than that to Burlington. There is a joint rate quoted in the tariffs to Burlington via Kansas City, but no bananas seem to have ever moved over that route. It is nothing more than a paper rate, bananas destined for Burlington moving through St. Louis.

Fourth. That the rates to Kansas City, Iola, Parsons, Topeka, and Hutchinson are unreasonable *per se* and as compared with the rates to other points.

The rates in effect with the distances via the Illinois Central and connections and the rate per ton per mile from New Orleans to the five cities, the rates to which are complained of, are as follows:

To—	Rate per 100 lbs.	Dis- tance.	Rate per ton per mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cent.</i>
Kansas City.....	63	879	0.0143
Iola.....	73	821	.0178
Parsons.....	73	819	.0178
Topeka.....	80	947	.0169
Hutchinson.....	80	991	.0161

From Mobile the rates are the same and the distances substantially the same.

As previously stated, the bananas delivered at these points originate on the Illinois Central or the New Orleans & Northeastern at New Orleans, and on the Mobile & Ohio at Mobile. These lines deliver the cars destined to Kansas points to the St. Louis & San Francisco either at Memphis or Tupelo, and they are thence hauled over the Frisco Line on a special schedule to Kansas City. The cars destined for Topeka are at Kansas City delivered either to the Rock Island or other connecting carriers; those destined for Hutchinson go either via Kansas City and over the Rock Island or are diverted at Fort Scott to another branch of the Frisco System, over which they are hauled to Burrton, Kans., and there delivered to the Santa Fe, for Hutchinson.

Cars for Iola are turned over at Fort Scott to the Missouri Pacific, and those for Parsons are diverted at Fort Scott and reach destination over the lines of the St. Louis & San Francisco. The 63-cent Kansas City rate applies to other points, such as Carthage, Pittsburg, Joplin, Fort Scott, and St. Joseph. The 80-cent Topeka rate is a blanket rate which runs a distance of 160 miles from Topeka to Hutchinson, Salina, and Wichita. The privilege is extended under a tariff provision of stopping a car in transit at one additional point upon a charge of \$5 per car to partially unload. This extends the benefit of the carload rate plus \$5 upon a less than carload lot to one intermediate point.

The routes via which bananas move from New Orleans to Kansas City are via Illinois Central Railroad to Memphis, thence via the Frisco to Kansas City, or via the New Orleans & Northeastern Railroad to Meridian, thence via the Mobile & Ohio to Tupelo, and thence to Kansas City via the Frisco. From Mobile they move via the Mobile & Ohio to Tupelo, and thence via the Frisco. The distance by these roads from New Orleans to Memphis via the Illinois Central, 395 miles; Memphis to Kansas City via the Frisco, 487 miles; New Orleans to Meridian via New Orleans & Northeastern, 196 miles; Meridian to Tupelo via the Mobile & Ohio Railroad, 144 miles; from Mobile the distance to Tupelo is 279 miles; from Tupelo to Kansas City, 589 miles.

The rates via the Illinois Central with the distances and the rate per ton mile from New Orleans to Chicago, Burlington, St. Louis, Memphis, and Louisville are as follows:

To—	Rate per 100 lbs.	Distance.	Rate per ton-mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cent.</i>
Chicago.....	46	922	0.0500
Burlington.....	52	983	.0511
St. Louis.....	48	710	.0521
Memphis.....	35	395	.0577
Louisville.....	30	798	.0500

The 46-cent rate to Chicago and the 63-cent rate to Kansas City have been continuously in effect certainly since 1893 and probably longer. The rate to Burlington was also 46 cents until January 16, 1907, when it was raised to 52 cents. The rate from Baltimore to Chicago is 47 cents; and it is claimed that the Chicago rate from New Orleans is made to meet the competition from Baltimore, but it is admitted that there is no such competition at the Mississippi River points and west thereof. The rate from Baltimore to Louisville is 47 cents, as compared with the 39-cent rate from New Orleans to Louisville, and from Baltimore to St. Louis 63 cents, as compared with 43 cents from New Orleans to St. Louis. It is evident, therefore, that the latter rates are not made to meet the competition from Baltimore, and hence may be termed "voluntary" rates.

The banana traffic of the Illinois Central has increased from about 8,000 cars in 1893 to 14,600 cars in 1907, and yielded a gross revenue of \$1,153,647.30 for the fiscal year ending June 30, 1907.

Both the Illinois Central and Mobile & Ohio submit statements of what they term the "special cost" of handling the banana business. This cost on the Illinois Central-Frisco route was figured to be \$39.35 per car, and covered the following items: Interest on the terminal investment at New Orleans, maintenance and improvement, car mileage (including the entire mileage from New Orleans to Kansas City at 1 cent per mile), loading expenses, wharfage, floors and racks, cleaning of docks, slatting cars, clerical hire, and weighing cars. The Mobile & Ohio figures the same expenses to be \$29.52. These so-called extra services given to bananas manifestly include all cost and expense to the railroad of every character excepting the actual cost of hauling the car. But the greater part of these services is such as must necessarily be given to any freight of a perishable nature handled in large quantity; and most of them are services required as to all freight.

The manner in which the Illinois Central estimates the extra cost of handling bananas at New Orleans is given in the following table:

Interest on land improvements and fixtures.....	\$20,434.06
Depreciation and repairs.....	20,686.15
Loss and damage claims.....	20,000.00
Killing of one messenger.....	4,500.00

Total expense per annum.....	65,620.20
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As the Illinois Central handled during the last three years an average of 13,000 cars per year, the extra expenses are appraised per car as follows:

Average cost above shown, per car.....	\$5.06
Car mileage.....	17.58
Loading expense.....	6.00
Wharfage.....	3.60

Floors and racks.....	\$5.00
Cleaning docks.....	.25
Slatting cars.....	.60
Clerical hire.....	.25
Weighing cars.....	1.00

Total expense at New Orleans..... 39.35

From one of the exhibits of defendants it appears that on a car of bananas weighing 20,000 pounds the earnings are \$126 between New Orleans and Kansas City. After paying the bridge charge of \$4 at Memphis, the earnings are divided as follows:

Illinois Central.....	\$54.90
St. Louis & San Francisco.....	67.10

The only charges in which the Frisco participates, excepting, of course, the mileage for the use of the car owned by the Illinois Central, is the loading charge of \$6 per car at New Orleans and the wharfage of \$3.60, of which charges the Frisco pays 55 per cent, that being the proportion which it gets of the through rate from New Orleans to Kansas City, the Illinois Central taking only 45 per cent, although it originates the traffic.

In addition to the terminal cost at the point of origin the carriers as to this traffic are subject to extraordinary expense arising primarily out of the fact that these bananas are carried in ventilator cars and without ice in order to save this expense to the shipper; and to increase the volume of the traffic greatly the carriers fifteen or more years ago instituted special train service, which is maintained sometimes at an embarrassment to other traffic. It is estimated also that nearly 80 per cent of the cars return from Kansas City empty. Owing to the fact that bananas must be moved immediately upon arrival, a large supply of cars must be held at New Orleans against the time when ships will arrive.

Two lines of argument are taken by the complainants, upon which they hinge their contention that these rates are unreasonable: (1) That the Illinois Central and other railroads give to Chicago and Burlington lower rates than are extended to Kansas City; (2) that other commodities, such as peaches and tomatoes, are carried an equal distance by railroads moving west of the Mississippi River at a lower rate than that applied to bananas. As to the latter contention we are unwilling to concede that a traffic which demands a special service in point of train speed should justly be compared with a traffic which is not given such consideration. Other perishable fruits and vegetables are carried in refrigerator cars under ice, for which the shipper pays. And it would appear unfair to compare these two classes of service. At least we can not hold that a carrier which gives an expedited service to a perishable commodity carried without refrigeration may

be required to extend the same rate to such commodity as is given to perishable freight carried on a slower schedule in cars supplied with ice, for it is to be remembered that these trains which move out of Memphis to the west are given more rapid movement than any other freight trains in that territory, and the Frisco Line is under agreement to make this special time whenever the Illinois Central turns over to it at Memphis as many as six cars.

A comparison of the Kansas City rate with those obtaining as to Burlington and Chicago would superficially justify a charge of discrimination as against the Kansas City carrier. The Burlington rate, however, is one which does not include expedited service from St. Louis to Burlington. The Chicago rate is one which the Illinois Central has established for the purpose of developing a great banana traffic. It must be presumed to be compensatory, having been maintained for fifteen years; but it does not follow that because a trunk line running from New Orleans to Chicago can carry a great volume of traffic in a competitive territory at a certain rate that the same rate must be extended to all points at an equal distance from New Orleans. Nor does it follow that because one railroad, as a matter of policy, extends a low rate for a special service all its connections must be held to an extension of the same policy and rate. The Illinois Central has a strategic position of great value. At its southernmost point it has the chief port of entry for this fruit, and dependent upon its northern terminus it has a great consuming territory. The traffic to the west from Memphis to Kansas City does not equal one-third of the total which the Illinois Central carries. It is urged by defendants that rates generally west of the Mississippi River exceed those obtaining on lines east thereof. This is not in itself a justification for the higher rate complained of. In so far as traffic is less dense, or the haul more difficult, or expenses of operation greater, there is justification for a high rate. But with the growth of population and the development of the country it is to be expected that this differential will grow less and less. The Commission has heretofore expressed its opinion that the western cities, such as Kansas City and Denver, shall be given the advantage arising from their proximity to the Gulf ports; but we have not yet held, nor have we had reason for holding, that it would be fair to the railroads west of the river to be placed upon a rate basis no higher than that in more thickly populated sections of the country. The Illinois Central may for its own purposes choose to charge a 46-cent rate upon bananas from New Orleans to Chicago; but in this we find no reason which compels us to the conclusion that a higher rate may not be charged to Kansas City over another road. Without doubt the rate to Chicago and the rate to Kansas City are both remunerative; but, considering the volume of the traffic to the two points

and the traffic conditions upon the two lines, it is not possible to say which one is the more remunerative, notwithstanding the difference between the two rates.

There is a demand throughout the country for a more rapid movement of freight and for some sort of guaranty as to time on the part of carriers. Statutes exist in some of the states requiring carriers to move state business a minimum distance per day. Measures of a similar character have been proposed in the national legislature. It has been suggested, and not without reason, that carriers might with propriety fix their rates upon the movement of certain commodities with reference to a guaranteed time provided for in their tariffs. Many associations of shippers have urged the enactment of laws under which carriers will be penalized for failing to make a fixed limit of speed in the transporting of commodities. It is in line with the policy of these statutes and suggestions that when carriers make a special effort to meet the requirements of a special commodity that they shall be permitted to maintain a schedule of charges higher than those obtaining on general traffic.

For the reasons here given an order will be made dismissing these complaints.

13 I. C. C. Rep.

No. 1364.

RHINELANDER PAPER COMPANY

v.

**NORTHERN PACIFIC RAILWAY COMPANY AND CHICAGO
& NORTHWESTERN RAILWAY COMPANY.**

Submitted May 4, 1908. Decided June 8, 1908.

Complaint challenged reasonableness of 8-cent rate on pulp wood, Duluth, Minn., to Rhinelander, Wis., and rate adjustment on paper from Rhinelander to points east of Mississippi River, whereby Rhinelander is charged rates 2 cents in excess of those applying from the Fox River district in Wisconsin. During the proceeding the 8-cent rate on pulp wood was reduced to 6.95 cents. *Held:*

1. That the reduced rate on pulp wood is not shown to be excessive.
2. That, upon all the facts disclosed, the rate adjustment on paper is not shown to be unlawful. Weight to be given by Commission to a contract for establishment of certain rates discussed and ruling in *Commercial Club of Omaha v. C. & N. W. Ry. Co.*, 7 I. C. C. Rep., 388, reaffirmed.

John Barnes for complainant.

C. W. Bunn for Northern Pacific Railway Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This complaint challenges the reasonableness of the rate in force when it was filed (December 10, 1907), upon pulp wood in carloads from Duluth, Minn., to Rhinelander, Wis., and the rates then and now in force upon paper in carloads from Rhinelander to points east of the Mississippi River.

Complainant owns and operates a paper mill at Rhinelander, Wis., a point on the Ashland division of the Chicago & Northwestern Railway 113 miles southeast of Ashland. Competitors in the manufacture and sale of paper are, among other places, located in what is known as the Fox River district in Wisconsin, including such points as Appleton, Nekoosa, Menasha, Kaukauna, Green Bay, and Neenah on the Chicago & Northwestern Railway, which points are 100 to

150 miles farther from Ashland and nearer to Chicago than Rhinelander. When the complaint was filed, the rate on pulp wood from Duluth to Rhinelander, as well as to the Fox River points, was 8 cents per 100 pounds. On shipments of paper to points east of the Mississippi River the rates from Rhinelander were and are 2 cents above the rates from Fox River points to the same destinations.

First, as to the rate on pulp wood from Duluth to Rhinelander: The short line between these points is over the Northern Pacific from Duluth to Ashland and thence over the Chicago & Northwestern to Rhinelander, and the 8-cent rate in force when complaint was filed was the joint rate of these roads applying via Ashland. During 1907 the Railroad Commission of Wisconsin made an extensive investigation of rates on pulp wood in Wisconsin, the result of which is contained in its report of January 9, 1908. In an order accompanying the report the Wisconsin Commission established distance rates on pulp wood between points in Wisconsin, and its order has been complied with by the railroad companies. By this order the rate from Ashland to Rhinelander is fixed at 3.95 cents per 100 pounds. During the hearing of this proceeding defendants announced their intention to establish a joint rate of 6.95 cents per 100 pounds on pulp wood from Duluth to Rhinelander, such rate being obtained by adding the Northern Pacific rate of 3 cents, Duluth to Ashland, to the Wisconsin distance rate of 3.95 cents, Ashland to Rhinelander. This rate of 6.95 cents has since been established by Tariff I. C. C. No. 3658, issued by the Northern Pacific Railway Company, April 13, 1908, effective May 17, 1908. The pulp-wood rate to Fox River points is still 8 cents, so that complainant's rate is now 1.05 cents per 100 pounds less than when complaint was filed and the same amount less than the Fox River rate.

The record contains no proof of the unreasonableness of the present rate, except comparison of distances. Concerning the 8-cent rate in force when complaint was filed, it is true that complainant was charged the same rate as the Fox River mills for a haul 100 to 150 miles shorter, but that is not true of the present adjustment. In respect to the reasonableness of the rate per se, complainant's evidence in the main consists of reference to tariffs of other lines which name the same rates from Duluth to the destinations in question by routes considerably longer than that of defendants. As the short line from Duluth to Rhinelander is via the Northern Pacific and Chicago & Northwestern, it would seem that rates over the longer routes must necessarily be the same as over the short line, if the longer lines desire to participate in the traffic; and it is difficult to see how the fact that the lines having the longer routes meet the short-line rate can have any probative force respecting the reasonableness of the short-line rate. Upon the showing made in reference to this

rate, and in view of the reduction which the defendants have made, we do not feel warranted in holding that the reduced rate is excessive.

As to the rate adjustment whereby Rhinelander is charged 2 cents in excess of the Fox River district on paper to points east of the Mississippi River: Upon shipments to points west of the Mississippi, Rhinelander receives the same rates as the Fox River district. In respect of rates to points east of the Mississippi River it appears that the paper mills of Wisconsin are divided into three groups. Taking Chicago as a representative destination, mills in the Fox River group have a 10-cent rate. This group is included within a line commencing near Manitowoc, on Lake Michigan, running west to Grand Rapids, north to Merrill, and east to the lake at Menominee. The group in which Rhinelander is situated is bounded by a line commencing at the shore of Lake Michigan immediately north of Menominee, running in a general westerly direction to Eau Claire, northwest to Park Falls, and thence easterly to the lake. Points in this group have a 12-cent rate. The third group includes the Wisconsin mills north of the Rhinelander group, which pay 13 cents.

Complainant's evidence concerning the reasonableness of rates on paper to Chicago and other points east of the Mississippi River consists of three kinds: (1) Tables showing rates for similar distances from Troy, N. Y., and Boston, Mass.; (2) an exhibit showing that, as a matter of distance, Rhinelander could be placed in the Fox River group without marked incongruity, and (3) a contract or agreement alleged to have been made by the Chicago & Northwestern Railway Company before the Rhinelander mill was erected whereby it was agreed that a certain basis of rates should be applied at Rhinelander. The first and third of these exhibits are little more than suggestive. As a general rule rates are less per ton per mile in Official than in Western Classification territory. The Commission has frequently pointed out that a comparison with rates in other and distant parts of the country, where different physical, competitive, and traffic conditions exist, is insufficient to establish the unreasonableness of the rates under examination. *Dallas Freight Bureau v. Missouri, Kansas and Texas Ry. Co. et al.*, 12 I. C. C. Rep., 427; *Morrell v. Union Pacific Ry. Co.*, 6 I. C. C. Rep., 121; *Lincoln Creamery v. Union Pacific Ry. Co.*, 5 I. C. C. Rep., 156.

The alleged agreement as to rates is found in a letter under date of April 22, 1903, from the general freight agent of the Chicago & Northwestern Railway Company to a director of the Rhinelander Paper Company, in which the following statement is made:

It will also be understood that the same basis of rates will apply from Rhinelander to points reached by our road and connections as is made on paper from Brokaw near Wausau.

The evidence disclosed a wide difference of opinion between complainant and defendants as to the construction to be placed upon this letter. Brokaw, on the Chicago, Milwaukee & St. Paul Railway, about 40 miles south of Rhinelander, is included in the Fox River group, and has a rate of 2 cents less than Rhinelander to points east of the Mississippi River. The official who wrote the letter in question testified that he intended only to promise that the Rhinelander mill should be placed upon the same basis of rates as other mills in the Rhinelander group, and that he could not consistently put it on any lower basis without reducing the rate from all mills in that group. It seems doubtful, in view of the recent decision of the United States Supreme Court in *Armour Packing Co. v. United States*, 209 U. S., 56, whether any contract such as is alleged to have been made by the railway company is valid or enforceable; and the weight to be given such a contract in proceedings before the Commission was virtually determined in and is apparently controlled by the decision in *Commercial Club of Omaha v. Chicago & Northwestern Ry. Co.*, 7 I. C. C. Rep., 386, where the following language is used:

However that may be, we are of opinion that this agreement of the carriers, even if established to the full extent claimed, would not materially aid the complainant. The Commission has no authority to enforce the performance of contracts; and the rights of the parties to this proceeding are not based upon contract obligations. If the rates in controversy discriminate unjustly against Omaha, they would be none the less unlawful though maintained under the most formal contract; and if they do not thus discriminate the carriers may rightfully continue them in force, though in so doing they violate their proven agreement.

If the interpretation of the letter above quoted were clear and unmistakable, it might be quite persuasive as to the rate which was then considered reasonable by the carrier, but otherwise it would seem to be of little value in determining the question at issue.

While we think the defendants might, without impropriety, apply the same rates from Rhinelander as from the Fox River district, or in other words place Rhinelander in the Fox River group, we are constrained to hold upon all the facts and circumstances disclosed that a differential of 2 cents above the Fox River rate is not unlawful. The application of group rates involves, in the nature of the case, some degree of discrimination, but such rates are not for that reason in violation of law, if the discrimination is not undue. *Desel-Boettcher Company v. Kansas City Southern Ry. Co. et al.*, 12 I. C. C. Rep., 220. Where group rates are established there must be, as a matter of course, a line of demarcation between them, and comparison of points near the dividing line may suggest injustice to the point taking the higher rate.

A similar injustice is suggested when points at a considerable distance from each other are placed in the same group and given the

same rate. In such case the point nearest to the consuming market pays a higher transportation charge in proportion to distance. It is true that Brokaw, in the Fox River group, is only 40 miles nearer Chicago than is Rhineland, but the territory from which the great bulk of the Fox River traffic moves is from 100 to 150 miles nearer to Chicago. Moreover, Rhineland, with reference to the topography of that region and the location of railway lines, is in a situation different from the Fox River territory. In view of this difference in distance and situation we are not convinced that a difference in rate of 2 cents per 100 pounds, which amounts to only four-tenths of a cent per ton per mile for the greater distance, is an unreasonable adjustment. It follows that the complaint must be dismissed, and an order will be entered accordingly.

13 I. C. C. Rep.

No. 1324.

PAYNE-GARDNER COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted May 9, 1908. Decided June 3, 1908.

1. The petition questions the reasonableness of the rate of 31 cents per 100 pounds applied by defendant to the transportation of sugar in carloads from New Orleans, La., to Gallatin, Tenn., and alleges that this rate constitutes unjust discrimination against dealers at Gallatin in favor of other shippers located at Nashville, Tenn., and Bowling Green and Louisville, Ky. Reparation is asked on account of the exaction of this alleged unreasonable rate. *Held*, That the present rate of 31 cents per 100 pounds applying on sugar from New Orleans to Gallatin is unreasonable and unjust, and that the reasonable rate to be charged for this transportation in the future should not exceed 25 cents per 100 pounds.
2. Advantages of location, such as proximity to a navigable stream or strong competition between carriers, naturally result in lower rates to a town so situated, and it is not the province of the Commission to disturb the resulting rate relations unless the discrepancy is so great as to effect an unjust discrimination against the noncompetitive point. But the mere fact that a given town has been recognized as a trade center, and is enabled by its more favorable rate adjustment to distribute in a certain territory, can not justify the continuance of relative rates which result in undue preference.
3. The law contemplates relatively fair rates between different places, and the dealer located in a small town is entitled to a reasonable adjustment which will enable him to compete on an equitable basis with dealers at trade centers enjoying the benefit of competitive rates.

William A. Guild and D. B. Puryear for complainant.

Wm. G. Dearing for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainant is a coal and
sale grocery business at
the freight rate of 31
the transportation
Gallatin, Tenn., is
15 cents per 100

ed in the milling and whole-
The petition alleges that
applied by defendant to
New Orleans, La., to
the rate of
the rate of

Tenn., 20 cents per 100 pounds to Bowling Green, Ky., and 17 cents per 100 pounds to Louisville, Ky., and constitutes unjust discrimination against Gallatin as compared with the other points named. Reparation is asked on account of the exaction of the alleged unreasonable rate.

Gallatin is located at the junction of the Chesapeake & Nashville Railway (now a part of the Louisville & Nashville system) with the main line of the Louisville & Nashville, $3\frac{1}{2}$ miles distant from the Cumberland River. Nashville is directly on the Cumberland River, and the rails of the Louisville & Nashville; Nashville, Chattanooga & St. Louis; Illinois Central, and Southern railroads. Bowling Green is on the main line of the Louisville & Nashville, 1 mile from the Barren River. Louisville, situated on the south bank of the Ohio River, is reached by the Baltimore & Ohio Southwestern; Chicago, Indianapolis & Louisville; Chesapeake & Ohio; Cleveland, Cincinnati, Chicago & St. Louis; Illinois Central; Louisville & Nashville; Louisville, Henderson & St. Louis; Pittsburg, Cincinnati, Chicago & St. Louis, and Southern railroads.

The population of Gallatin is, approximately, 2,500; Bowling Green, 8,500; Nashville, 85,000, and Louisville, 250,000.

The distance from New Orleans to Nashville via the Louisville & Nashville Railroad is 626 miles, to Gallatin 652 miles, to Bowling Green 697 miles, and to Louisville 811 miles. The short-line distance, New Orleans to Nashville, is 593 miles via the Illinois Central and the Nashville, Chattanooga & St. Louis, and to Louisville 780 miles via the Illinois Central.

The complainant maintains the only wholesale house at Gallatin. There are two jobbing houses located at Bowling Green and a large number at Nashville and Louisville.

No shipments of sugar move to Gallatin from New Orleans via the Cumberland River, and the boat lines do not compete with the rail carriers in the handling of this traffic. It also appears that the boat lines do not now handle any of this traffic to Bowling Green, and that no such shipments have moved to Nashville by the water route within the last ten or fifteen years. During the twelve months ending November 1, 1906, the boat lines handled, approximately, 51 carloads of sugar from Evansville to Bowling Green, and it is contended that owing to this competition the rate from New Orleans to that point was reduced from 25 to 20 cents per 100 pounds on April 10, 1907. Formerly there was a movement of sugar from New Orleans to Nashville via the all-water route in connection with the line from Paducah to Nashville, but it does not appear that there was any such movement at the time the rate of 15 cents now in effect to Nashville

March 29, 1903.

As showing the changes which have been made in the rates on sugar from New Orleans, La., to Nashville, Tenn., and to Bowling Green, Ky., the following tables are inserted:

[Rates in cents per 100 pounds.]

	C. L.	L. C. L.
<i>To Nashville, Tenn.</i>		
October 9, 1897, to February 10, 1898.....	<i>Cen's.</i> 18	<i>Cen's.</i> 22
February 10, 1898, to February 1, 1899.....	18	21
February 1, 1899, to March 29, 1903.....	17	21
March 29, 1903, to May 26, 1907.....	15	21
May 26, 1907, to July 2, 1907.....	15	21
July 2, 1907, to date.....	15	21
<i>To Bowling Green, Ky.</i>		
December 5, 1896, to March 13, 1898.....	21	24
March 13, 1898, to July 26, 1898.....	40	43
July 26, 1898, to July 18, 1900.....	35	43
July 18, 1900, to August 2, 1900.....	35	37
August 2, 1900, to May 22, 1906.....	30	37
May 22, 1906, to April 10, 1907.....	25	37
April 10, 1907, to date.....	20	37

The controlling factor in the adjustment of the rates on sugar from New Orleans to Louisville is the competition with St. Louis and sugar-producing points on the Atlantic seaboard. The rates to Louisville and St. Louis are on a parity, and any change brought about by competition at one place automatically works a corresponding change at the other. The competition of steamboats operating on the Ohio and Mississippi rivers has also affected the Louisville rate, although there has been no movement of sugar by water to Louisville in recent years.

The all-water route from New Orleans to Nashville and Gallatin is via the Mississippi River to Paducah, Ky., thence via the Cumberland River, which is navigable to Gallatin at the same season of the year as to Nashville. The all-water route New Orleans to Bowling Green is via the Mississippi to Cairo, thence via the Ohio, Green, and Barren rivers. The Barren River is not deep enough to permit the operation of the same steamers that ply on the Ohio and Green rivers, so that it is necessary to transfer shipments coming to Bowling Green by the water route; whereas it is contended that the largest steamer plying between Paducah and Nashville could land at Gallatin. The rate as quoted on December 11, 1907, by the boat line operating between Paducah and Nashville is 15 cents per 100 pounds and by the same line from Nashville to Gallatin it is also 15 cents. The distance from Paducah to Nashville is only one-third of the distance by the water route from New Orleans to Paducah, and traffic handled in this way between New Orleans and Nashville is subject to several transfers between different boat lines. The all-rail rate to both

Paducah, Ky., and Cairo, Ill., is 17 cents per 100 pounds, carload minimum weight 33,000 pounds.

The competition of boat lines for traffic to Nashville is at the present time potential rather than actual, and it is conceded that sugar could not be handled from New Orleans at a profit under a rate as low as 15 cents per 100 pounds, therefore water competition as it now exists does not control the Nashville rate. This water competition has also been diminished to a considerable extent on account of the direct through service afforded by the rail carriers. Many years ago there were through boats from New Orleans to Nashville, but they found it necessary even then to charge a higher rate than 15 cents per 100 pounds for the traffic to yield a profit.

Rates to points on the main line of the Louisville & Nashville between Nashville and Bowling Green are made on the lowest combination. There are no jobbing houses at any of these points except Gallatin. The rates from Gallatin to such points are the same for similar distances as from Nashville, but the Nashville combination is materially less to points which complainant contends are tributary to Gallatin on account of their closer proximity to that place. For example, the rate to Hartsville, Tenn., 47 miles from Nashville and 21 miles from Gallatin, is the Nashville rate of 15 cents plus the local of 24 cents, making a total through rate of 39 cents as against the combination on Gallatin of 45 cents; the rate from Nashville to Scottsville, 61 miles, is 27 cents, total 42 cents; Gallatin to Scottsville, 35 miles, 20 cents, total 51 cents; Nashville to Franklin, 53 miles, 25 cents, total 40 cents; Gallatin to Franklin, 25 miles, 14 cents, total 45 cents.

It is also contended that Bowling Green jobbers under the present rate adjustment can successfully compete in territory contiguous to Gallatin to the disadvantage of complainant.

The rate of 16 cents per 100 pounds applying from Nashville to Gallatin is available to the Nashville jobber on less than carload shipments of sugar, so that under the present adjustment the Nashville dealer can retail sugar in Gallatin at the same freight rates at which the Gallatin dealer receives his supply in carload quantities. This 16-cent rate covering the 26-mile haul from Nashville to Gallatin is made on the basis of the local scale of the Louisville & Nashville as applied to local points on that line. It is claimed by the carrier that were the rate from New Orleans to Gallatin made strictly in accordance with this local mileage scale it would be 66 cents per 100 pounds as against the present rate of 31 cents, which results from the fact that Gallatin is accorded the benefit of the competitive rate of 15 cents to Nashville. This system of using the rate to the competitive point as a basing rate is uniformly applied in this territory whenever

such combination will make a less rate than that made on the basis of the local mileage scale. However, the distance bases are observed in making rates in all cases except where competition forces a different adjustment.

Murfreesboro, Tenn., is a local point on the main line of the Nashville, Chattanooga & St. Louis Railway, 32 miles southeast of Nashville and 269 miles east of Memphis. The through rate on sugar, carloads, from New Orleans to Murfreesboro is 23 cents. The combination of locals via Memphis would make a total of 51 cents per 100 pounds, made up 12 cents, New Orleans to Memphis, plus the fifth class rate of 39 cents, Memphis to Murfreesboro. The rate of 15 cents, New Orleans to Nashville, plus the fifth class rate of 16 cents, Nashville to Murfreesboro, would make the combination of locals on Nashville 31 cents per 100 pounds.

In the argument of this case by counsel for defendant much stress was laid on the fact that the present rate to Nashville resulted from the order of the Commission in the case of *Phillips, Bailey & Co. et al. v. Louisville & Nashville R. R. Co. et al.*, 8 I. C. C. Rep., 93. In that case an order was entered forbidding the exaction of higher rates on sugar and molasses to Nashville than to Louisville. The rate then in effect on sugar in barrels to Louisville was 17 cents, carloads, and 23 cents, less than carloads, and to Nashville 18 cents, carloads, and 21 cents, less than carloads. The rates now in effect on this commodity to Louisville are the same, so that it can not be said that the present rate of 15 cents applying on sugar in carloads to Nashville is due to that order. It was contended by the traffic manager of the Louisville & Nashville Railroad Company that the present rate to Nashville is forced by water competition, yet the same witness admits that there has been no movement of sugar by water to Nashville during the past ten or fifteen years, and it further appears from the record of the case above referred to that there had been no such movement by water for two or three years prior to April, 1897. The same witness stated that the boat lines could not afford to handle sugar to Nashville under a rate as low as 15 cents per 100 pounds, and it seems that they could not successfully compete with the rail carriers at a rate of 18 cents per 100 pounds to Nashville, formerly in effect.

The reduction from 25 to 20 cents per 100 pounds in the rate to Bowling Green is in like manner alleged to have been forced by water competition. But only an inconsiderable volume of this traffic appears to have been carried by the boat lines during the existence of the 25-cent rate, and since the Bowling Green rate was reduced to 20 cents no sugar whatever has moved via the river to that point; thus to both Nashville and Bowling Green the rates established by

defendant have resulted in a complete elimination of the boat lines, which formerly participated to some extent in the handling of this traffic.

It is apparent that under the present rates complainant is greatly restricted as to the territory which he can reach in competition with jobbers located at Nashville and Bowling Green, and the Commission must consider whether or not this is due to transportation conditions which justify the discrepancy. Advantages of location, such as proximity to a navigable stream or strong competition between carriers, naturally result in lower rates to a town so situated, and it is not the province of the Commission to disturb the resulting rate relations unless the discrepancy is so great as to effect an unjust discrimination against the noncompetitive point. But the mere fact that a given town has been recognized as a trade center, and is enabled by its more favorable rate adjustment to distribute in a certain territory, can not justify the continuance of relative rates which result in undue preference. The law contemplates relatively fair rates as between different places, and the dealer located in a small town is entitled to a reasonable adjustment which will enable him to compete on an equitable basis with dealers at trade centers enjoying the benefit of competitive rates.

Upon all the facts appearing in this case, it is the opinion of the Commission that the rate on sugar from New Orleans to Gallatin, Tenn., should not exceed 25 cents per 100 pounds in carload quantities. This rate was formerly applied by defendant on sugar to Bowling Green, Ky., a farther distant point over the same line and in the same direction from point of origin. The evidence is not convincing that this rate to Bowling Green resulted from any actual and controlling competition, and we therefore deem it a fair measure of the reasonable rate for the shorter haul to Gallatin. Nor will this adjustment seriously affect the trade center system so far as it concerns Nashville and Bowling Green. It will simply enable the wholesale dealer at Gallatin to reach adjacent towns on an approximate basis of equality. The margin of profit on a staple article like sugar is necessarily small and the Gallatin jobber should not be shut out of this local territory by the competition of dealers at Nashville and Bowling Green.

Reparation will be awarded in the amount of the difference between the rate now in effect and the rate here prescribed, on shipments moving on and subsequently to the filing of the petition herein, November 11, 1907, upon presentation and proof of such claims.

An order will be entered in accordance with these conclusions.

No. 1191.

PHILLIPS-TRAUWICK-JAMES COMPANY, COMPLAINANT;
AND CUMMINGS & BENNETT COMPANY; HANKS SMITH &
COMPANY; C. T. CHEEK & COMPANY; COLEMAN-TOMP-
KINS & COMPANY; MATTHEWS, HARRISON, PHILLIPS &
COMPANY; J. COONEY & COMPANY; ORR, JACKSON &
COMPANY, AND SPRATTON & SEAY, INTERVENERS,

v.

SOUTHERN PACIFIC COMPANY; TEXAS & PACIFIC RAIL-
WAY COMPANY; ILLINOIS CENTRAL RAILROAD COM-
PANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY,
AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAIL-
WAY COMPANY.

Submitted April 16, 1908. Decided June 8, 1908.

1. Complaint attacks the reasonableness of rates on canned goods and dried fruit from Pacific coast terminals to Nashville as compared with other points in Tennessee, Ohio, and Kentucky, and alleges violation of the fourth section of the act; *Held*, That the rates complained of are not unreasonable *per se* and that they do not unjustly discriminate against Nashville and in favor of the other points named.
2. The record discloses that the traffic involved in the complaint is hauled through Nashville to farther distant points at lower rates than are charged at Nashville by only one defendant, and by that defendant to only four of the points mentioned in the complaint. The controlling conditions of competition at each of those four points are found to be such as to relieve defendant from the charge of violating the long and short haul section of the act.

Jordan Stokes for complainant and interveners.

W. G. Dearing for Louisville & Nashville Railroad Company.

Sidney F. Andrews for Nashville, Chattanooga & St. Louis Railway Company.

F. C. Dillard for Southern Pacific Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant corporation is a wholesale grocery company at Nashville, Tenn., and makes carload shipments of canned goods and of dried fruit, in boxes and in sacks, from Pacific coast terminals to Nashville

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over the lines of the defendant carriers, as their various routes may run. The interveners are wholesale grocers and merchandise brokers who join with complainant in the request for relief. Only one witness appeared for complainant, and but one, a merchandise broker, gave testimony in behalf of interveners, and, while both complainant and interveners requested oral argument, neither appeared therefor.

The rates of defendants which are here brought in issue are, from Pacific coast terminals to Nashville, in cents per 100 pounds in carloads, as follows: Canned goods, 89; dried fruit in boxes, 116; dried fruit in sacks, 136.

Complainant and interveners assert that these rates are unjust and unreasonable and unjustly discriminatory against Nashville, as compared with the rates on the same commodities from Pacific coast terminals to Milan, Humboldt, and Jackson, Tenn.; Cincinnati, Ohio; Louisville, Owensboro, Elizabethtown, Henderson, Paducah, and Hopkinsville, Ky., and Evansville, Ind., which are, in cents per 100 pounds in carloads, as follows: Canned goods, 75; dried fruit in boxes, 100; dried fruit in sacks, 120.

Complainant also alleges that these rates unduly prefer the points last named to the unreasonable disadvantage of Nashville, complainant and interveners; and that defendants violate the fourth section of the act to regulate commerce in carrying said commodities through Nashville to some of the points last named at lower rates, the haul being via the same line in the same direction to farther distant points. Complainant prays that the rates to these last-named points be also applied to Nashville.

The rates to Nashville and to the other points mentioned are published in Trans-Continental Eastbound Tariff 3-E, I. C. C. No. 318 and supplements thereto, and in accordance with the established policy of the transcontinental lines apply from the points of origin to different group or blanketed territories or to basing points. Every point within a group or under a blanket takes the same rate, or where the rate applies to a basing point it is by special provision made applicable to other specified points. The rates last named from Pacific coast terminals apply alike to Missouri River common points, Mississippi River common points, Chicago and common points, Cincinnati-Detroit and common points, Pittsburg-Buffalo and common points, New York and Boston and common points. Points between any of these groups take higher rates than points within the groups named, and such rates, generally speaking, are fixed at amounts that do not permit points enjoying the group rate to get into that intermediate territory by a combination of the through rate in and local out on equality with the rate fixed at the intermediate point.

On the commodities mentioned the group rating has not been applied to the territory lying east of the Mississippi River and south of the Ohio River, because the lines operating in that territory have never consented to such application of the rates. This condition undoubtedly exists because the carriers serving this southeastern territory do not originate much traffic destined to the Pacific coast, and therefore they do not have the same opportunity to make reciprocal arrangements with the transcontinental lines on west-bound business that is possessed by the carriers operating east of Chicago and north of the Ohio River. The rates from Pacific coast terminals to southeastern common points territory are made up of the rates to the Mississippi River common points territory plus the locals from the Mississippi River crossing nearest the point of destination, or of the rates to Cincinnati, Detroit, and common points plus the locals from the Ohio River crossing nearest the destination. The through rates on these commodities to Nashville are therefore the rates from Pacific coast terminals to Columbus, Ky., plus the locals from Columbus to Nashville. The locals from Columbus were: On canned goods 14 cents per 100 pounds and on dried fruit in boxes or sacks 16 cents, and they are alleged to be influenced by water competition via the Cumberland River. However, on March 1, 1908, those rates were advanced to 16 cents per 100 pounds on canned goods and 18 cents per 100 pounds on certain specified dried fruits in boxes or in sacks, straight or mixed carloads.

The rates to the Ohio River crossings herein mentioned make through East St. Louis or Cairo; and to Nashville, through Columbus, because the short line mileage to the destinations named is through those crossings.

Milan, Humboldt, and Jackson, Tenn., and Elizabethtown and Hopkinsville, Ky., are not in Mississippi River common points territory nor in Cincinnati-Detroit common points territory; but they are given the same rates on these commodities that apply to those territories. Nashville is in neither of the territories named.

Complainant offered no proof as to the unreasonableness of the rates in controversy except by way of comparison with the rates to the other points specified, and we can not find that the rates are unjust or unreasonable in and of themselves.

The real contention seems to be that the application of the Mississippi River common points rate or of the Cincinnati-Detroit and common points rate to points that are not within the territories covered by those group rates unjustly discriminates against Nashville, and that the haul through Nashville to the points hereinafter mentioned at lower rates, constitutes a violation of the fourth section of the act to regulate commerce.

It appears from the record that Nashville has a large territory in which to distribute its goods. The through carload rate on any of the commodities covered by this complaint from points of origin to any of the points to which the rate is lower than to Nashville, plus the local carload rate from that point, will permit a dealer therein to get within 30 miles of Nashville, from either the north or the west, on an equality of rate with Nashville. On a combination of through carload rates in, and less than carload rates out, the rates from such point and from Nashville equalize at something over 50 miles either north or west from Nashville. It is true that the carload rates in, to any of those points, plus the locals out permit dealers there to get nearer to Nashville than dealers in Nashville can get to such other points, but that is largely because the shipments from Nashville in the direction of those points involves a back haul. On the other hand, the present rate adjustment permits Nashville to distribute its goods much nearer to Decatur, Birmingham, Chattanooga, and Atlanta than those points can get to Nashville, and it is likewise protected against a back-haul rate that would equalize that advantage.

From the record we are unable to say that the adjustment at the other points compared with Nashville produces undue preference or unjust discrimination. The points farther north and farther west, being nearer the points of origin, would naturally have some advantage; but that is not undue.

The complainant insists, however, that Nashville should be given the Cincinnati-Detroit common points rate because it applies to Milan, Humboldt, and Jackson, Tenn., Nortonville, Elizabethtown, and Hopkinsville, Ky. The first four of these points are on the line of the Illinois Central running from New Orleans to Evansville. Elizabethtown is on the line of the Illinois Central from New Orleans to Louisville, and Hopkinsville is on a branch line of the Illinois Central running from Gracey, Ky. Until the Illinois Central acquired the Tennessee Central, running from Nashville to Hopkinsville, its lines did not reach Nashville. It appears from the record that the Illinois Central has adopted, as a policy, a literal compliance with the fourth section of the act in that it applies to intermediate points no higher rates than it applies to farther distant basing points on its line. The rates to the Ohio River crossings hereinbefore mentioned being governed by the lines reaching them through Cairo or East St. Louis, the Illinois Central, in hauling traffic from the same points of origin that moves via New Orleans, must meet the rates of the other lines at the Ohio River crossings. In doing this it transports property through all of the points last above mentioned except Hopkinsville and Nashville. Hopkinsville takes the Ohio River rate; Nashville does not. The application of this rate to Hopkinsville was made long before the

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Illinois Central's line reached Nashville, and it gave Hopkinsville that rate, undoubtedly, because it gave it to Gracey, which is the junction point of the Hopkinsville branch.

The only points mentioned in the complaint, to which this traffic is moved through Nashville, are Louisville, Elizabethtown, Evansville, and Hopkinsville, and the transportation in each case is by the Louisville & Nashville Railroad. Elizabethtown is on the line to Louisville and Hopkinsville on the line to Evansville. The Louisville & Nashville Railroad has not seen fit to adopt the policy of the Illinois Central in regard to applying basing points rates to intermediate points, except in cases where the circumstances and conditions surrounding the same are substantially similar, and while it transports these commodities through Nashville and to the points named at lower rates, it has not applied those rates to Nashville, on the ground that the circumstances and conditions at the farther distant points are substantially dissimilar from those at Nashville.

The record clearly shows that the circumstances and conditions surrounding Nashville and the Ohio River crossings and Mississippi River common points are substantially dissimilar. It indicates that by reason of the location of the latter, the fact that the short line mileage from Pacific coast terminals is to those points, and that the rate from said terminals makes via that mileage, Nashville would not be entitled to those rates as a matter of right in the making of an original adjustment of rates from those terminals. And further, the Louisville & Nashville Railroad in accepting this traffic at New Orleans is obliged to haul to the Ohio River at the rates fixed by the routes moving through Cairo or East St. Louis, which is another competitive condition that does not obtain at Nashville. Complainant is entitled to those rates only in the event that there is a violation of section 4 of the act in hauling through Nashville to points below the Ohio River where the circumstances and conditions are substantially similar to those at Nashville. The record discloses but two points outside of the boundaries of the territories referred to that take those rates to which the transportation passes through Nashville, and those are Elizabethtown and Hopkinsville, Ky. Elizabethtown is a junction point of the Louisville & Nashville and the Illinois Central railroads, a short distance from Louisville. The Illinois Central gave Elizabethtown the Louisville rate, and the Louisville & Nashville met that rate.

Hopkinsville is a junction point of the Illinois Central and the Louisville & Nashville railroads, on the latter's line to Evansville. The Illinois Central gave Hopkinsville the Ohio River rate, and in October, 1906, the Louisville & Nashville met the competitive rate of the Illinois Central, so that a condition of competition in these rates obtains at Elizabethtown and Hopkinsville which does not prevail at Nashville.

This is also true as to Milan, Humboldt, Jackson, and Nortonville. All of them are junction points on the Illinois Central either with the Louisville & Nashville or the Nashville, Chattanooga & St. Louis, and those two carriers have simply met the competitive rates of the Illinois Central at those points, but they do not transport the commodities covered by this complaint through Nashville to those points.

As before observed, Hopkinsville is not on the lines of the Illinois Central between New Orleans and Evansville, and therefore does not fall under its policy of literal compliance with the long and short haul section of the act, and it is insisted that said carrier should extend the Ohio River rate to Nashville as well as to Hopkinsville and thereby create the same competitive condition at Nashville.

The lack of force in this contention rests in the assumption that one point can not be included in a group rate without extending the same to all other points lying beyond. It is clear that the group or basing point system, so long in vogue, should not be disturbed on the application of some point not included within the group unless such group rate works an unreasonable disadvantage to the point complaining. The competition from Mississippi River common points, Ohio River crossings, or Jackson is not unjustly discriminatory or unreasonably disadvantageous to Nashville, because the distributing rates from those points and Nashville equalize about 50 miles either north or west from Nashville. Those points do not compete in the territory east of Nashville and but little in the territory south thereof. Milan, Humboldt, and Hopkinsville furnish no competition with Nashville because there are no wholesale grocery houses there, and the record is silent as to competition from Elizabethtown.

The question seems to narrow down to whether or not the Illinois Central unjustly discriminates against Nashville by giving Hopkinsville a lower rate. In this case it happens to be a group or basing-point rate, but if the rate had been either higher or lower than the basing-point rate, and no unjust discrimination resulted, there would be no reason for giving Nashville that rate. And the fact that Hopkinsville has been given the group or basing-point rate is likewise no reason why Nashville should be included within that group in the absence of a showing of unjust discrimination resulting to Nashville.

In its answer to this complaint the Southern Pacific Company said:

That the reason for charging and collecting higher rates on the commodities named, for the transportation of said commodities from Southern Pacific coast terminals to Nashville and said other destination points, is because of the action of the southeastern lines in demanding that rates between said Southern Pacific coast terminals and said southeastern points be made upon an arbitrary basis, which gives to the southeastern lines an unreasonable proportion of the through rates between said points, and which gives to said southeastern lines an unreasonable division of said rates.

It, however, in said answer denies that the through rates are unjust or unreasonable.

Complainant urges that the statement above quoted is an admission of the unreasonableness of the rates. The Southern Pacific Company in testimony says that the allegation refers only to the divisions of the rates, and that it is negotiating for divisions more favorable to it. It seems clear that no admission of unreasonableness of the through rates was intended or contemplated. The defendants show that the rates on canned goods and dried fruits from Columbus, Ky., to Nashville are, respectively, 14 and 16 cents per 100 pounds. These rates added to the rates from the Pacific coast terminals to the Mississippi River make the through rates to Nashville. We can not find from this record that either the rates from Pacific coast terminals to the Mississippi River or to the Ohio River crossings, or the local rates from the Mississippi River or Ohio River crossings to Nashville, on these commodities, are unreasonable.

We are satisfied from the entire record that the rates complained of at Nashville have not been shown to be unjust and unreasonable, or unjustly discriminatory against Nashville, or unduly preferential to other points, and that they do no violence to section 4 of the act to regulate commerce. It follows that the complaint and the petition of the interveners should be dismissed, and such an order will be entered.

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No. 1290.

FORT SMITH TRAFFIC BUREAU

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY AND
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted May 16, 1908. Decided June 2, 1908.

1. The concurrent existence of two separate and distinct rates on the same commodity is condemned when the traffic moves over the same route in the same direction, between the same points, and the carriers, by their published tariffs, assume to charge one rate or the other according to the ultimate use to which the commodity is to be put.
2. Tariffs which apply rates upon commodities according to their use are improper. The carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put. The duty of a common carrier is to transport commodities at its tariff rates and on equal conditions for all.

C. H. Ivers and Mechem & Mechem for complainant.

E. B. Peirce, Ed. Baxter, R. Walton Moore, and Thomas S. Buzbee for defendants.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complaint in this case was filed September 26, 1907, by the Fort Smith Traffic Bureau, a mercantile association composed of manufacturers and jobbers, having its principal office at Fort Smith, in the state of Arkansas, and was brought by complainant on behalf of the city of Fort Smith, the Equitable Powder Manufacturing Company, and the manufacturers and shippers of nitrate of soda.

The matter alleged is the concurrent existence of two separate and distinct rates on the same commodity, when moved over the same route in the same direction, between the same points; the carrier defendants by their published tariffs assuming to charge one rate or the other according to the ultimate use to which the commodity is to be put.

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The specific allegations are:

3. That effective July 27, 1907, defendants did publish and post a through carload rate of 20 cents per 100 pounds to apply on nitrate of soda from New Orleans, La., to Fort Smith, Ark. (Arkansas Tariff No. 1-I, I. C. C. No. 51, Supplement No. 32, item 5445.)

4. That effective same date, July 27, 1907, defendants published and posted through carload rate of 20 cents per 100 pounds to apply on "potash salts and nitrate of soda, to be used exclusively in the manufacture of fertilizer, carloads, minimum weight 30,000 pounds," from New Orleans, La., to Fort Smith, Ark. (Arkansas Tariff No. 1-J, I. C. C. No. 58, item 370.) (Canceling I. C. C. No. 51, and supplements thereto.

5. That on carload shipments of nitrate of soda, to be used in the manufacture of powder, from New Orleans, La., to Fort Smith, Ark., through rate of 27 cents per 100 pounds is applied.

6. That said increase in rate was made without justification. That the rate applied on nitrate of soda to be used in the manufacture of fertilizer yields compensatory revenue to the defendants for the service performed. That the present rates as increased as above set forth are unjust, unreasonable, and unduly prejudicial to Fort Smith, to the other common points in Arkansas, to the Equitable Powder Manufacturing Company, dealers and shippers of nitrate of soda.

Reparation is asked.

The separate answer of the Illinois Central Railroad Company is in these words:

3. The allegation contained in paragraph 3 of the complaint is misleading in that it creates the impression that the rate therein mentioned was intended to be applied to nitrate of soda used in the manufacture of powder. There was no such intention nor was the rate so supplied, and the exact fact is that the rate was published, as will appear from the tariff, in the following terms:

"Effective July 27, 1907. Fertilizer: Potash salts and nitrate of soda, C. L., from New Orleans, La., to Fort Smith, Ark., 20 cents per 100 pounds."

The rate thus published was a fertilizer rate on nitrate of soda included with potash salts as a fertilizer or for use in the manufacture of fertilizer.

4. The truth of the allegation contained in paragraph 4 of the complaint is admitted, the rate therein mentioned being the rate applied to "potash salts and nitrate of soda" used in the manufacture of fertilizer.

5. The truth of the allegation contained in paragraph 5 of the complaint is admitted, but the said paragraph is misleading in creating the impression that the rate of 27 cents per 100 pounds is restricted to nitrate of soda used in the manufacture of powder, the exact fact being that the rate in question applies on nitrate of soda however used, whether in the manufacture of powder, the manufacture of fertilizer, or otherwise. The said rate has been and is the lawfully published rate on nitrate of soda.

The St. Louis & San Francisco Railroad Company answered as follows:

3. Defendant admits that on July 27, 1907, it published and posted a through carload rate of 20 cents per 100 pounds to apply on "Potash salts and nitrate of soda, to be used exclusively in the manufacture of fertilizer," from New Orleans, La., to Fort Smith, Ark., but states that said rate was withdrawn on September 30, 1907, and a rate of 27 cents established in lieu thereof.

4. Defendant admits that on carload shipments of nitrate of soda to be used in the manufacture of powder, from New Orleans, La., to Fort Smith, Ark., a through rate of 27 cents per 100 pounds is applied.

5. Defendant denies that the present rates on nitrate of soda from New Orleans to Fort Smith are unjust, unreasonable, or unduly prejudicial to Fort Smith, to the other common points in Arkansas, or to the Equitable Powder Manufacturing Company, dealers and shippers of nitrate of soda.

At the hearing at Fort Smith it was agreed by all parties that the complaint was brought for the benefit of the Equitable Powder Manufacturing Company, and the attorneys for that company took entire charge of the complainant's side of the case.

The testimony was directed to develop the situation with respect to importation of nitrate of soda, its transportation to the various consuming points, and the tariff rates charged thereon by the interstate carriers from the ports of entry. The hearing developed the facts that no fertilizer factory ever existed at Fort Smith or at Fenn; that Fenn is the name of the manufacturing plant of the Equitable Powder Manufacturing Company, located about $4\frac{1}{2}$ miles south of Fort Smith and connected by a spur track with the main line of the St. Louis & San Francisco Railroad Company; that this spur track is about 1 mile long and belongs to the railroad; that no other industries are located at Fenn beside the powder works; and that by certain tariffs by certain routes when the delivering carrier is the Frisco the rates on certain commodities, including nitrate of soda, applicable to Fort Smith are also applicable to Fenn.

With respect to nitrate of soda, it is shown that all of the commodity is obtained from Chili and Peru, South America, bagged in sacks; that the bags vary in weight from 200 to 300 pounds each; that the principal ports of entry are Mobile and New Orleans, on the Gulf, and Boston, New York, Wilmington, Baltimore, Newport News, and Savannah on the Atlantic, although other ports might be used if desirable, as the vessels used are tramp ships especially engaged under charter parties; that the recent price has been \$2.40 per hundredweight, f. o. b. cars at New Orleans; that there is no risk in handling it, being as harmless as common salt; that there are only two grades of the commodity, 95 per cent and 96 per cent, the percentage being very carefully determined and the price varying sensitively with a variation of one-tenth of 1 per cent in the purity of the article; that little purification of the article is attempted, nothing more than to separate the earthy material; that the impurity in the commodity is not a salt of potash, but is ordinary table salt, or chloride of sodium; that nitrate of soda enters into the composition of powder to the extent of 75 per cent of actual weight; that nitrate of soda is seldom used by itself as a fertilizer; and that in carload shipments there is no difference in the transportation of nitrate of soda, whether it is destined to a powder plant or to a fertilizer factory.

The evidence also shows that Fort Smith, or rather Fenn, gets nitrate of soda not only from New Orleans, but from the Atlantic

ports, paying a higher rate thereon than the rate complained of; that the ships bring from 5,000 to 6,000 tons in a cargo, requiring 200 cars or more to transport it, and that the harbor and dock facilities of the Illinois Central at New Orleans necessitate the immediate loading and movement of these cars to destination; that what are known commercially as potash salts come from Germany; and that there is no mixture known as "potash salts and nitrate of soda."

Bearing these facts in mind, the tariffs on nitrate of soda from New Orleans to Fort Smith and Fenn, Ark., are very remarkable, to say the least.

The shipments concerning which the Equitable Powder Manufacturing Company offered evidence moved from New Orleans August 20, 21, 22, and 23, 1907. At that time the rates in effect were:

Illinois Central Railroad Tariff No. A-18687, I. C. C. No. J-4387, effective April 1, 1907, Joint Freight Tariff from Shippside, New Orleans, La. (when originating in South America) on nitrate of soda, C. L. (minimum weight 50,000 pounds per car, except when the marked capacity of the car is less, in which event the marked capacity will govern).

To Fenn, Ark., 27 cents per 100 pounds, route 2 (route 2 is explained as via Memphis, Tenn., and St. L. & S. F. R. R.—the way the shipments were routed).

At that time there was also in effect Arkansas Tariff No. 1-J, I. C. C. No. 58, published by George W. Cale, agent, to which the Illinois Central R. R. and the St. Louis & San Francisco R. R. were named as parties concurring. This tariff provides as follows:

Item No. 370, potash salts and nitrate of soda, to be used exclusively in the manufacture of fertilizer, carloads, minimum weight 30,000 pounds.

New Orleans, La., to Fort Smith, Ark., 20 cents per 100 pounds.

Supplement No. 1 to this tariff, effective August 19, 1907, modified Item No. 370, by this special application:

Item No. 673½, potash salts and nitrate of soda (see Item 370). Rates on potash salts and nitrate of soda from New Orleans, La., to Fort Smith, Ark., will also apply to Fenn, Ark.

These were the only tariffs in force at the time the shipments moved and applicable to transportation from New Orleans, La., to Fenn, Ark. There was testimony to the effect that in the opinion of a rate expert the 20-cent rate on nitrate of soda for fertilizer would apply from shippside, but the expert was mistaken as to such application so far as traffic moving via Memphis over the lines of the defendants was concerned. Neither Item No. 370 nor Item No. 673½ would so apply. Item No. 253 of Arkansas Tariff No. 1-J, I. C. C. No. 58, applies a shippside rate over another route, and says:

13 I. C. C. Rep.

(c) Via Illinois Central * * * and Yazoo & Miss. Valley R. R. Notice is hereby given that rates named in this tariff will include actual cost of transfer from warehouses, spurs, or switches located on tracks of competing lines, when such competing lines apply the rates named herein from such warehouse, spur, or switch.

The only shipside tariff in effect at the time the shipments moved, August 20, 21, 22, and 23, was the Illinois Central R. R. Tariff No. A-18687, I. C. C. No. J-4387, above referred to, which carried a rate of 27 cents per 100 pounds on nitrate of soda from New Orleans to Fenn, Ark.

The four bills of lading filed by the complainant show the contents, in weight, of the 18 cars to have been in the aggregate 1,344,165 pounds, being an average of 74,675 pounds per car; the charge of 27-cent rate per 100 pounds; the routing to have been via Memphis and the St. L. & S. F. Railroad, the route over which they traveled; and the expense bills show the same rate. Mr. Bedwell, the agent in charge of the business of the powder company, testified that the last shipment received prior to these 18 carloads was in June, 1907, and the rate charged was 27 cents per 100 pounds, and that after these August shipments moved and before the expense bills were paid whenever he wanted a rate he saw what they had on file in their office; and in answer to the question, "You may state whether or not, in response to your request for the tariffs and for that information, they gave you any other tariffs than those which have been introduced in evidence here," he replied: "This tariff is the only one on file"—this 1-J, showing the rate of 20 cents. He was informed by the chief clerk that the rate was 27 cents on a shipside tariff, but if he did not have the tariff that it had not been furnished him and was not there; and in answer to the question, "They did quote to you a rate of 27 cents?" he replied: "They said the rate was 27, and they would not accept 20." He wanted them to accept a 20-cent rate on the shipment.

This case emphasizes the impropriety of tariffs which apply rates upon commodities according to their use. We have repeatedly condemned such tariffs, and we now say the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put. The duty of a common carrier is to transport commodities at its tariff rates and on equal conditions for all.

There has never been a fertilizer factory at Fenn, nor, so far as the testimony shows, at Fort Smith, Ark. The inclusion in the Arkansas Tariff No. 1-J, I. C. C. No. 58, of rates on nitrate of soda "to be used exclusively in the manufacture of fertilizer," was unnecessary and liable to deceive.

In *Stowe-Fuller Co. v. Pennsylvania Co. et al.*, 12 I. C. C. Rep., 215, we held that classification must be based upon a real distinction
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from a transportation standpoint. The Commission can not regard a classification as scientific, or a difference in rates as well based, which is altogether founded upon a distinction that has no transportation significance. Such a differentiation would lead to an almost endless multiplication of rates, which could find no excuse save the use which might be made of the article transported.

In the case of the *Capital City Gas Co. v. Central Vermont Ry. Co. et al.*, 11 I. C. C. Rep., 104, the Commission held that it is not permissible under section 2 of the act for two or more carriers to establish a joint through rate which is applicable only to a particular shipper or class of shippers while denying such lower rate to other shippers of like traffic between the same points of origin and destination.

The evidence is that the 20-cent through rate on nitrate of soda to be used exclusively in the manufacture of fertilizer has never been applied on transportation from shipside, New Orleans, La., to Fort Smith, or Fenn, Ark., and that it could not be so applied. The rate as published was not applicable to the shipments in question.

In view of the foregoing and having in mind the additional fact that the 27-cent rate under which the shipments moved was applicable to many other points where powder is made, our conclusions are that the Illinois Central Railroad Tariff No. 18687, I. C. C. No. J-4387, effective April 1, 1907, joint freight tariff from shipside, New Orleans, La., when originating in South America, on nitrate of soda, carload, minimum weight 50,000 pounds per car, to Fenn, Ark., 27 cents per 100 pounds, routed via Memphis, Tenn., and the St. Louis & San Francisco Railroad, is the only tariff applicable to these shipments, and that the rate of 27 cents therein shown and charged upon these shipments has not been shown to be unreasonable, or unjust or unduly discriminatory, and that no reparation can properly be made, and this case must be dismissed. An order will be made accordingly.

The attention of the defendants is called to the interminable confusion existing in their tariff schedules in regard to shipments to this powder company at Fort Smith, Ark., with the expectation that they will make them specific and intelligible.

No. 1227.

J. W. THOMPSON LUMBER COMPANY; RUSSE & BURGESS; JAMES E. STARKE & COMPANY; E. SONDHEIMER COMPANY; E. E. TAENZER & COMPANY; I. M. DARNELL & SON COMPANY; DARNELL-TAENZER LUMBER COMPANY; GREEN RIVER LUMBER COMPANY; ARTHUR HARDWOOD FLOORING COMPANY; LAMB-FISH LUMBER COMPANY; MEMPHIS RIM & BOW COMPANY; S. C. MAJORS & COMPANY, BANKS & COMPANY, AND NOLAN BROTHERS

v.

ILLINOIS CENTRAL RAILROAD COMPANY; YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Submitted May 6, 1908. Decided June 1, 1908.

The rate of 12 cents per 100 pounds now in effect on hardwood lumber from Memphis to New Orleans is unreasonable and should not exceed 10 cents per 100 pounds.

W. A. Percy for complainants.

Ed. Baxter and *R. W. Moore* for Illinois Central Railroad Company.

C. N. Burch and *C. L. Sivley* for Yazoo & Mississippi Valley Railroad Company.

M. L. Clardy for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Lumber shippers at Memphis, Tenn., complain that the rate of 12 cents per 100 pounds on hardwood lumber (except gum) from Memphis to New Orleans is unreasonable and unjust. The original complaint was filed June 20, 1907; an amended complaint was filed August 26, 1907, naming the Chickasaw Cooperage Company as an additional complainant and the St. Louis, Iron Mountain & Southern Railway Company as an additional defendant. Reparation is claimed on shipments made between February 2, 1903, when the present rate became effective, and the time of filing the complaint, the details, and amounts as to each shipper being set forth in exhibits attached to the complaint.

The Illinois Central Railroad Company operates a line of railway between Memphis and New Orleans, 395.4 miles in length, and the Yazoo & Mississippi Valley Railroad Company operates a line between the same points 455.6 miles long. These two roads are east of the Mississippi River and are controlled by the same interests, having common operating and executive officers. The St. Louis, Iron Mountain & Southern Railway Company operates a line west of the Mississippi through Arkansas and Louisiana, and at Alexandria, La., connects with the Texas & Pacific, entering New Orleans over the rails of that company, making a combination line 541 miles in length. It also operates a line via Little Rock and Alexandria, in connection with the same company, 631 miles in length. Lumber may be shipped by various routes from Memphis to the several Gulf ports, but substantially all of it moves over the Illinois Central and Yazoo & Mississippi Valley Railroads when exported via New Orleans.

In 1883 the predecessor of the Yazoo & Mississippi Valley completed its line between Memphis and New Orleans, and put in effect between those points a rate of 10 cents on hardwood lumber for export. Between 1884 and 1887 the rate was at times 12½ and 15 cents, but on November 27, 1888, it was again reduced to 10 cents and remained at that figure for fifteen years, until February 2, 1903, when the present rate of 12 cents was put in force. Prior to 1887 the publication of tariffs was not required by law, and it is generally admitted that they were not strictly adhered to even when published. Prior to November, 1906, the railroads "equalized," through all Atlantic and Gulf ports, the rates on commodities shipped to foreign countries. Under this practice, although a rate was published by the carrier to one American port, it was not adhered to when a lower through rate to a foreign country was effective through any other port, because the carrier would reduce its inland rate sufficiently to make the through rate to the foreign country the same through all ports. The necessary result of this was that the railroads received less than their published tariffs to the ports. It follows from this that the defendant carriers actually received less than 12 cents on the lumber exported prior to November, 1906. This practice did not affect the revenues on hardwood lumber through New Orleans to the same extent that it did through other ports, because the lowest rate on this commodity was generally through this port. It, however, materially reduced the actual revenue on cotton, as lower combinations were often effective via other ports. Its discontinuance resulted in diverting to defendants practically all lumber shipped from Memphis to foreign destinations. Prior to that time a large quantity of lumber moved via Norfolk, it being in evidence that one shipment moved on an 11-cent rate to that port.

At the same date, approximately—the spring of 1903—the railroads of the south generally increased the rate 2 cents per 100 pounds on yellowpine lumber destined north, and on hardwood lumber, except gum, from Memphis, Nashville, and other points, destined south. The rates on hardwood lumber north from Memphis were not changed.

The method of handling lumber by the railroads between Memphis and New Orleans has been the same since February 2, 1903, as prior thereto, with the exception that the railroads, owing to the increased capacity of cars and engines, are now enabled to load from 20 to 25 per cent more in a car and to haul a much greater tonnage per train.

When the 10-cent rate was first put in effect there was little or no business in hard-wood lumber from Memphis to New Orleans. In 1903, when the higher rate became effective, this business had become so great that Memphis was known, as it is now, as the largest hardwood market in the world, this commodity affording as large a tonnage as any single commodity transported by rail between Memphis and New Orleans, unless it may be cotton.

Lumber, owing to the fact that it is a very low grade of freight, not liable to damage, is shipped in any kind of car, without respect to the car's condition, provided it be strong enough to sustain the average load of fifty or sixty thousand pounds. It moves with greater regularity, probably, than any commodity hauled, and is loaded by the shipper, who pays the carrier three-quarters of a cent per 100 pounds for unloading at New Orleans. On a 50,000-pound shipment this unloading charge amounts to \$3.75, while formerly the charge was \$2.50 or \$3.

Memphis has competitors in the hardwood lumber business in Indiana, Kentucky, Tennessee, Virginia, and West Virginia, to meet which, at foreign destinations, it necessarily has to absorb any increase in rates not borne by its competitors.

Practically all the lumber shipped to New Orleans is for export. From a revenue standpoint this freight is not as much sought by the ships as is cotton and other commodities paying a higher transportation rate, though it is needed on a ship for proper balancing of cargo. It is therefore true that lumber may be delayed somewhat longer at New Orleans than is cotton or similar high-class freight. Owing to this, both prior to 1903 and subsequent thereto, the cars loaded with lumber and awaiting water transportation have been held at New Orleans for an unusually long period; the delay since 1903 may have been somewhat greater than before, owing to the increased volume of business which, up to the fall of 1907, likewise accounted for the shortage of equipment on the part of carriers generally. The respondents devoted much testimony to showing the extent of this delay, and

exhibited statements indicating that cars were delayed at New Orleans unloaded on an average of about fourteen days, while complainants presented figures showing the delay was about eight days.

It was testified that cars were worth about \$2.50 per day to the carriers, though the demurrage charge was only \$1 per day and car rental paid to each other was but 50 cents. The same witness also testified that although there had always been this marked delay on export shipments, yet the carriers had never charged shippers demurrage on that account, but prior to 1903 and subsequent thereto had voluntarily maintained 3 car-service rules on lumber consigned to New Orleans: First, upon that consigned for domestic use, a demurrage charge of \$1 per day was made after forty-eight hours free time. Second, upon that consigned on what was termed a "port" bill of lading twenty days free time at New Orleans was allowed up to sixty days prior to the hearing in this case, when such free time had been reduced to ten days. Third, lumber for export was allowed to remain indefinitely in the car awaiting water transportation. Although this defense of the rate was made at the hearing, yet when the rate was increased the delay at New Orleans was not urged as one of the causes. The reasons assigned at that time were that the lumber business was a prosperous business and the rates on that commodity were not bearing a just share of the transportation expenses, which had largely increased owing to the advanced cost of railroad operation.

Since March, 1907, the defendants have adopted the rule "not to issue through bill of lading unless steamer is in sight." This is accomplished by the carrier's representative in New Orleans receiving telegraphic notice that ships are coming in. This gives several days' notice before the time of loading. Under this new practice, when the railroad is advised that a shipper has lumber to export, it issues a contract in which it specifies when the loading is to take place. By this method defendants have materially decreased the delay at New Orleans. There are not berths enough at times at New Orleans for the ships loading or unloading. This in part results in the delay of cars at New Orleans. The delay is also no doubt somewhat accounted for by the fact that when traffic was congested between Memphis and New Orleans lumber often did not arrive at the wharves in time to reach the ship to which it was billed. Necessarily this lumber had to be held on the wharves or in the cars until the next ship sailed for the foreign port.

Not only was there delay at New Orleans, but likewise at Memphis. One witness testified that 60 cars loaded with lumber were delayed in the Memphis yards five and two-tenths days before they were placed at his place of business for unloading. Under the rules, two days additional were allowed for unloading, making the actual time the cars were in the yards seven and two-tenths days.

At the time of the increase of the rate there was a marked scarcity of cars, which continued until the fall of 1907. Since that time it is reported that the defendants have a large number of cars idle.

Wages and cost of material in connection with railroads have largely increased during the last ten years, as in all other lines of business, including that of manufacturing lumber. On the other hand, the enterprise of the railroads has kept pace with such increase by improvements in their roadbeds and equipment to such an extent that, as the superintendent of transportation of the Yazoo & Mississippi Valley Railroad testified at the hearing, they had just about offset the increased cost growing out of increased wages and cost of material.

There has been a substantial increase in the market price of both gum and hardwood lumber from 1897 to 1907. This has been due both to the scarcity of timber generally, thereby increasing the price of stumpage, and to increased price of labor and supplies.

While cotton is valued at about \$2,500 per car, and hardwood lumber at \$500, and while cotton pays 17 cents per 100 pounds, and lumber 12 cents, yet the lumber loading 54,000 pounds to the car earns \$64.80, while cotton loading 25,000 pounds earns only \$42.50. Up to November, 1906, when this same 17-cent rate was in effect, as a matter of fact the carrier earned less, owing to the practice of equalizing rates on export traffic through the several ports, and the testimony is that such equalization on cotton through New Orleans resulted in 1906 in reducing the actual rate received to 15½ cents.

Molasses, valued at \$1,300 per car, moving north in box cars at 10 cents per 100 pounds produces a revenue of about \$42.50 per car, and sugar, valued at about \$1,400, carried at the same rate, produces a revenue of \$36.60 per car. Cotton-seed meal, valued at about \$400, moves on a 10-cent rate from Memphis to New Orleans and produces a revenue of \$50 or \$55.

The Illinois Central hauls a carload of bananas weighing 20,000 pounds from New Orleans to Memphis at 35 cents, or \$70 per car, while the revenue received from a car of oak lumber in the reverse direction, Memphis to New Orleans, is \$64.80. These bananas are hauled in special trains at passenger speed, in expressly constructed ventilator cars, with a messenger carried free both ways, and in this business, too, the cars are held at New Orleans a long time, awaiting the arrival of ships loaded with the fruit.

Gum lumber, moving between the same points at the same time in the same train, though about 30 per cent less valuable than oak and weighing about one-fourth less, is transported on a 10-cent rate, thus producing \$42 revenue, as against \$64.80 for the oak. In other words, under the present adjustment of rates oak pays 54 per cent

more revenue per car than gum, of which there is a large volume shipped.

Following are rates on some commodities of heavy tonnage hauled by the Illinois Central between Memphis and New Orleans. None of these commodities load a greater weight per car than hardwood lumber, unless it be cotton ties or scrap iron, and most of them load much lighter.

Rates in cents per 100 pounds.

Commodity.	Rate.
	<i>Cents.</i>
Jute bagging.....	10
Cement and plaster.....	5
Cotton ties.....	20
Bran, mill feed, flour, corn, barley, oats, corn meal, etc.....	9
Scrap iron.....	5
Rice.....	10
Molasses.....	10
Salt.....	9

The regular class rates between Memphis and New Orleans show a rate of 12 cents for Class A, including jute bagging, asbestos roofing, asphalt paving blocks, clay, and cotton ties. As shown above, two of these articles are hauled at a much lower rate under a commodity tariff.

At the hearing the general freight agent of the St. Louis, Iron Mountain & Southern Railway testified that that carrier had never been a party to the 10-cent rate on oak lumber when it was in force between Memphis and New Orleans; that he did not consider that rate remunerative and would not seek it on those terms; that his company did not seek it at the 12-cent rate, and that the few cars that had been handled were proffered it without solicitation. There is no tariff on file with the Interstate Commerce Commission which indicates that this company ever participated in the 10-cent rate referred to. It was testified that when the "river line" of this carrier was completed the distance would be 532 miles. This carrier also had to pay a bridge charge at Memphis of \$3.50 per car on all the lumber and staves moved, and had to pay the Illinois Central a switching charge at Memphis of \$2 per car on a portion of such traffic.

The following table, made up from the reports of the Illinois Central and the Yazoo & Mississippi lines to this Commission, tells an interesting and instructive story of the development of traffic upon these roads and the increasing volume of returns therefor during the past fourteen years

It will be noted that since 1902 the capacity of the average freight car of the Illinois Central has increased from 31 tons to 36 tons, or 16 per cent; that the average tractive power of its locomotives has increased 17 per cent, and the average number of tons of freight per train-mile has increased from 275 to 364, or over 30 per cent. The capacity of the average freight car of the Yazoo & Mississippi Valley has increased from 23 to 31 tons, or 35 per cent; and while the tractive power of its locomotives has not increased, yet the average number of tons of freight per ton-mile during the same period has increased from 215 to 318, or practically 50 per cent. This indicates that these defendants may now haul from 16 to 35 per cent more freight per car and from 30 to 50 per cent more freight per train than they could in 1902, just prior to the advance in the rate. Comparing the present with 1893, the Illinois Central may now haul considerably more than 100 per cent greater tonnage per train.

The rate of 12 cents per 100 pounds for the haul of 395 miles yields the Illinois Central .00607 per ton-mile as compared with .00577, its average receipts per ton-mile on all traffic. The Yazoo & Mississippi Valley at the same rate for its 455-mile haul between the same points earns .00527, compared to .0075, its average receipts.

In determining what is a reasonable and just rate many considerations are involved. Among these are the general financial and physical condition of the road, the character of the commodity in question, whether it constitutes a large or small part of the business of the carrier, whether it is economical or expensive to handle, how it compares with other commodities hauled, and, as evidencing the railroad's own judgment, whether a different rate has been in effect on this commodity at some other time.

A review of the record makes it apparent that lumber constitutes probably as large a tonnage, if not the largest, of all the commodities transported on the Illinois Central and the Yazoo & Mississippi Valley railways between Memphis and New Orleans; that it is about the lowest grade of freight moved (except coal); that it is less liable to damage than any other commodity; is loaded and unloaded at the expense of the shipper; is moved in any kind of a car, and moves with probably greater regularity throughout the year than any other commodity.

It is true that lumber cars are delayed at New Orleans for export, but this is a matter within the control of the carrier and results in part from a lack of adequate dock facilities at the port. It could be remedied by increasing these facilities, or by not moving the lumber from Memphis until just prior to the time the ship is to sail. In fact, pending these proceedings, this latter method has been adopted, and the evidence is that it has greatly relieved the delay. At any rate

Rep., 548—and the Commission held that the alleged increase in operating expenses of the roads and the prosperous condition of lumber business generally in the south did not justify the increase. These cases were taken into the Federal courts and finally decided has been rendered by the Supreme Court of the United States, which affirms the conclusion of the Commission.

As the increase in the rate on hardwood lumber from Memphis New Orleans was made at substantially the same time as the increase on yellow pine lumber going north, and as the defendants in the complaint were defendants in the two cases named, the opinion of the Commission expressed in those cases on the two grounds of defense made are reaffirmed in this case.

The only new grounds advanced by the defendants in these cases that of the delay of cars at New Orleans when the lumber is destined for export, and damage to cars. At the time of the advance no new grounds were alleged, and, as stated above, this delay is an outgrowth of the method of performing the export business by these carriers, who have built up the business. For reasons doubtless satisfactory to themselves they did not provide wharfage and dock facilities necessary for the prompt release of the equipment, and are of opinion that this delay does not justify the 12-cent rate. Even the defendants did not contend that gum lumber is subjected to a shorter period of delay than oak lumber, yet they have continued in effect the 10-cent rate on the gum lumber while advancing the rate on oak.

It would seem that this justification of the 12-cent rate on the ground of the delay of cars at New Orleans is largely an outgrowth of the general congestion of traffic throughout the country during the last few years. It is probable that if the facts could be ascertained as to the delay of cars at any of the great terminals since 1903 it would be found to be as great as at New Orleans and to account for much of the shortage of cars. This has been no fault of the shipper; it is the result of the lack of terminal facilities. If the uncontradicted evidence of the complainants as to a delay of seven and two-tenths days at Memphis sets forth the facts truly, then an increase in rate from Memphis into Memphis would be justifiable on the same ground as the increase in rates at New Orleans, based on the delay at that terminal. Rates can not be based on such considerations, as the delay varies from time to time and also according to the efficiency of the operating department. It would be equally as sound a doctrine to justify an increase of rates on the fact that a railroad has more business than it can handle over its line as to base such increase on the fact that it has more business than it can handle at its terminals.

The damage to the cars can not be held to justify the increase while the rate on gum lumber remains unchanged. Furthermore, there is an absolute contradiction of the defendant's testimony in this regard, and it is very questionable if the rough lumber damages cars to the extent claimed.

Under all the circumstances, the Commission is of the opinion, and so holds, that the rate of 12 cents now in effect via the Illinois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company is unjust and unreasonable, and that 10 cents per 100 pounds should be established as a maximum between the points mentioned via the lines of those two carriers.

As appears from the evidence, the St. Louis, Iron Mountain & Southern Railway Company has never participated in the rate on hardwood lumber between Memphis and New Orleans at less than 12 cents and did not seek the business even at that rate, only accepting such as was tendered it by shippers. By this route the lumber has to be hauled about 50 per cent farther than the short line mileage via the Illinois Central Railroad, and, furthermore, it has to divide its revenues with the Texas & Pacific Railway, which participates in the carriage. Under these circumstances the Commission is of the opinion that as to the St. Louis, Iron Mountain & Southern Railway Company the complaint should be dismissed. This view is in consonance with the position taken by complainants in their brief to the effect that they did not wish to further prosecute the case against this defendant.

An order will be entered in accordance with the views herein expressed as against the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company.

We can not award damages in this case based upon the use of the 12-cent rate up to the date of the filing of the complaint because of the laches of complainants and because the record does not conclusively disclose that the rate was unreasonable prior to such date.

The questions of law as to reparation and the amount thereof under the above ruling will be reserved for consideration at a later date.

No. 1138.

GEORGE D. BURGESS; RUSSE & BURGESS; J. W. THOMPSON LUMBER COMPANY; JAMES E. STARK & COMPANY; E. SONDEIMER COMPANY; LAMB-FISH LUMBER COMPANY; ARTHUR HARDWOOD FLOORING COMPANY; I. M. DARNELL & SON COMPANY; DARNELL-TAENZER LUMBER COMPANY; BARKSDALE & DENTON COMPANY; THOMPSON & McCLURE; MEMPHIS RIM & BOW COMPANY; J. A. HOLMES LUMBER COMPANY; GREEN RIVER LUMBER COMPANY; CARRIER LUMBER & MANUFACTURING COMPANY; S. C. MAJOR LUMBER COMPANY; BOMER BROTHERS; G. W. JONES LUMBER COMPANY; JOHN B. RANSOM & COMPANY; NASHVILLE FLOORING COMPANY; DAVIDSON-BENEDICT COMPANY; FENWOOD LUMBER COMPANY; BANKS & COMPANY; ARPIN HARDWOOD LUMBER COMPANY; NOLAN BROTHERS; WYBORG HANNA COMPANY; BAKER LUMBER COMPANY; GAYOSO LUMBER COMPANY; CRITTENDEN LUMBER COMPANY; R. M. FLETCHER LUMBER COMPANY; HEATH-WITBECK COMPANY; F. S. HENDERSON LUMBER COMPANY; HYDE LUMBER COMPANY; LANSING WHEELBARROW COMPANY, AND THREE STATES LUMBER COMPANY

v.

TRANSCONTINENTAL FREIGHT BUREAU; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; BURLINGTON & MISSOURI RIVER RAILWAY COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHOCTAW, OKLAHOMA & GULF RAILWAY COMPANY; CHOCTAW, OKLAHOMA & TEXAS RAILWAY COMPANY; COLORADO MIDLAND RAILWAY COMPANY; COLORADO & SOUTHERN RAILWAY COMPANY; DENVER & RIO GRANDE RAILROAD COMPANY; EL PASO & NORTHEASTERN RAILROAD COMPANY; GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY; GALVESTON, HOUSTON & NORTHERN RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; LOUISIANA WESTERN RAILROAD COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; MORGAN'S LOUISIANA & TEXAS RAILROAD

& STEAMSHIP COMPANY; OREGON RAILROAD & NAVIGATION COMPANY; OREGON SHORT LINE RAILROAD COMPANY; OREGON & CALIFORNIA RAILROAD COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; SOUTHERN CALIFORNIA RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; TEXAS & PACIFIC RAILWAY COMPANY; UNION PACIFIC RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY; SOUTHERN RAILWAY COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, AND MOBILE & OHIO RAILROAD COMPANY.

Submitted May 21, 1908. Decided June 2, 1908.

1. Rates upon soft-wood lumber from Pacific coast producing points may properly be lower to eastern destinations than rates upon hardwood lumber from such eastern destinations to Pacific coast points.
2. A rate of 85 cents from Chicago and Chicago points to Pacific coast points, upon hardwood lumber, is excessive; that rate should not exceed 75 cents.
3. Where a shipper has paid an excessive rate he may recover as reparation the difference between the rate paid and what would have been a reasonable rate at the time, even though he may not ultimately be damaged by the payment of the higher rate.
4. Reparation is allowed in this case only from the date of the filing of the complaint.

W. A. Percy and Allen Hughes for complainants.

Robert Dunlap and J. L. Coleman for Atchison, Topeka & Santa Fe Railway Company.

S. F. Andrews for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, Southern Railway Company, Nashville, Chattanooga & St. Louis Railway Company, and Mobile & Ohio Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

J. C. Jeffery for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

W. F. Herrin for Southern Pacific Company.

N. H. Loomis for Union Pacific Railroad Company.

W. W. Cotton for Oregon Railroad & Navigation Company.

P. L. Williams for Oregon Short Line Railroad Company.

Baker, Botts, Parker & Garwood for Galveston, Houston & San Antonio Railway Company and Texas & New Orleans Railroad Company.

J. P. Blair for Morgan's Louisiana & Texas Railroad & Steamship Company and Louisiana Western Railroad Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

F. C. Dillard for Union Pacific System and Southern Pacific Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainants, who are manufacturers of and dealers in hard-wood lumber, complain that the rate upon their product from eastern points of production to the Pacific coast is unreasonable. The present rate is 85 cents per 100 pounds. For several years previous to 1904 the corresponding rate had been 75 cents per 100 pounds and the original complaint in this case attacked only this advance. It appeared upon the hearing, however, that the complainants had in the past insisted that the rate should be lower than 75 cents, and counsel for the complainants asked and obtained leave to amend his complaint so that its present allegation is that the rate should not exceed 50 or, at most, 60 cents. The case has been heard and submitted upon this claim of the complainants.

The question presented can perhaps be best considered by examining in detail the reasons urged by the complainants for a reduction in these rates.

Extensive comparisons were instituted both by the complainants and the defendants between this rate of 85 cents on lumber and other transcontinental rates. Such comparisons afford but little assistance in this case. As this Commission has often had occasion to remark, rates from territory east of the Missouri River to the Pacific coast are profoundly influenced by water competition, and the effect of this competition depends largely upon the nature of the commodity and the point of its production. For example, the rate on cotton piece goods between Chicago and New York is 55 cents per 100 pounds. The rate upon lumber is the regular sixth class rate, 25 cents per 100 pounds. The rate on cotton piece goods from Chicago to San Francisco, in carloads, is \$1, and upon the lower grades 90 cents. It will be seen therefore that while the rate on lumber is less than one-half that upon cotton cloths between New York and Chicago (and the same thing would be generally true in territory east of the Missouri River), this rate of 85 cents on lumber from Chicago to the Pacific coast is almost as high as the rate upon cotton piece goods. This, however, is due to the fact that cotton cloths are woven largely in New England, are a kind of freight which can be cheaply carried by water, and therefore command, both from their character and from the locality of their production, a low water rate, which must be met by the rail line if it carries the traffic.

Upon the other hand, articles have been selected by the defendants, by comparison with which the lumber rate attacked would appear to be fairly in line with other transcontinental rates. These comparisons, as already suggested, are of but little value in determining the question before us.

The complainants rely, in support of their contention that in no case should a rate exceeding 60 cents be applied from Chicago, mainly upon the rates which the defendants have voluntarily established and maintained for the movement of soft-wood lumber in the opposite direction. From 1894 up to November 1, 1907, carriers maintained a rate of 40 cents per 100 pounds to St. Paul and 50 cents per 100 pounds to Chicago upon fir and, during the later portion of that period, upon spruce. The rate upon cedar and pine shingles, which do not load as heavily as fir and spruce, has been somewhat higher. Effective November 1, 1907, or thereabouts, these rates were advanced from 40 to 50 cents at St. Paul and from 50 cents to 60 cents at Chicago. Now, the complainants insist that the cost of transporting hardwood westbound is less than the cost of transporting soft wood east bound, and that therefore if these defendants have voluntarily maintained for the period of fourteen years a rate of 50 cents to Chicago, and if after an experience of fourteen years they only claim that this rate should now be advanced to 60 cents, there is no justice or right in imposing upon the movement of hardwood lumber in the opposite direction a rate of 85 cents. They assert that this injustice is all the more apparent when it is remembered that hardwood lumber weighs more than soft wood and therefore lends itself more readily to heavy car loadings, and that the empty-car movement is toward the west.

The lumber shipped by the complainants is mostly birch and oak. The former weighs, in the rough, as shipped, about 4,000 pounds per 1,000 feet board measure, the oak about 4,500 pounds. Soft-wood lumber moves from the Pacific coast to the east in various conditions, being sometimes shipped green and sometimes after having been dressed and kiln-dried, and the weight of the lumber varies greatly, according to the condition in which it is shipped. Rough green fir weighs from 3,000 to 3,300 pounds per 1,000 feet; when dressed and kiln-dried, from 2,000 pounds up. Hence the product of the complainants weighs, on the average, at least 25 per cent more per cubic foot than the soft-wood lumber, which bears the lower eastern rate.

This would indicate that cars might be loaded more heavily toward the west than they are toward the east, but such does not appear to be in actual practice the fact. The records of the Great Northern Railway Company for one month show the average loading of hardwood to the west to be something over 49,000 pounds and the average loading of soft-wood lumber toward the east about 48,000 pounds.

But the testimony in the cases involving the reasonableness of recent advances on soft-wood lumber east bound shows that the average loading of all lumber by all lines from the Pacific coast east exceed 50,000 pounds. This seems to be due partly to the fact that while the hardwood of the complainants is always shipped in box cars, much of the lumber from the Pacific coast is carried upon flat cars, so that the quantity loaded is not limited by the size of the car, and partly to the fact that certain rules with respect to the minimum loading of east-bound lumber recently put into effect have increased the average loading east bound. It seems probable that if the defendants saw fit to establish and enforce the same minimum regulations to west-bound lumber which they apply to the east-bound movement the loadings of west-bound hardwood would certainly be as great, if not greater, than those of east-bound soft wood.

It has been stated by the defendants as a justification for the advance in the east-bound rate that in 1894 the empty-car movement was largely west bound upon the Great Northern and the Northern Pacific railways, and that one reason for putting in the rate to St Paul was to provide loads for these cars, which must otherwise come east empty. Since then the volume of the lumber traffic has enormously increased, and this increase in connection, perhaps with other causes, has reversed the empty-car movement, so that to-day the preponderance of empty cars upon these lines is towards the west. It is insisted that the fact that these railroads are obliged to haul back without loads the cars in which they bring this soft wood lumber from Washington and Oregon east is a reason why they may properly advance that rate. The complainants argue that if this is a reason for an advance in the rate on soft-wood lumber east, then certainly the same fact is an equally potent reason for a reduction of the hardwood lumber rate west.

The testimony in this case shows that the empty-car movement upon the Northern Pacific and Great Northern is west bound and that this is true of the Union Pacific considered as a line to Portland, but that the empty-car movement upon the Southern Pacific and the Atchison is still toward the east. It also appears that the bulk of the movement of this hardwood lumber is to San Francisco and Los Angeles and points south of San Francisco. Without inquiring, therefore, what weight ought to be attached to the empty-car movement were it west bound upon all the lines involved, it may be noted that, under the circumstances of this case, it is not an item of much consequence.

The defendants point out certain things which they say differentiate the west-bound from the east-bound movement and make it proper to apply a higher charge to the west than is made to the east. One of these is the difference in the value of the commodity carried.

The two kinds of hardwood which move to the coast are birch and oak. The birch seems to be produced principally in Wisconsin. The lower grade, which is mainly shipped, is worth about \$24 per 1,000 feet f. o. b. point of shipment. The higher grade of red birch sells for about \$10 per 1,000 feet more. Oak, which is principally shipped from Memphis and territory in that vicinity, sells, f. o. b. at the point of shipment for from \$40 to \$70 per 1,000 feet. It is said that these values are much greater than the value of soft-wood lumber.

While the birch which actually moves to the Pacific coast exceeds in value, on the average, that of the soft woods which are cut in Washington and Oregon, the log run of birch at the mill in Wisconsin is not worth more per 1,000 feet than the log run of fir in Washington. It should also be noted that the cheaper grades of fir never have and do not yet move on the 40-cent rate to St. Paul. Those grades stop at substantially the same rate at points 200 miles and more west of St. Paul. It is altogether probable that the value of the Washington lumber which actually reaches or passes Minnesota-Transfer upon the 40-cent rate is as great f. o. b. the mill as that of this birch which is shipped to the Pacific coast. The value of the oak would seem to be distinctly more. It is not probable, however, that the value of this oak much if any exceeds that of the better grades of pine which move from the mills of Wisconsin and Minnesota at the regular lumber rate.

The complainants who manufacture birch also manufacture soft-wood lumber in Wisconsin, and this soft wood comes directly into competition at various points with the Pacific coast lumber. They insist that if they were given a rate of 50 cents upon their product they would be able to dispose of the lower grades of hardwood upon the coast and that if the Pacific coast lumberman is accorded a rate of 50 cents for the purpose of enabling him to market his product as against the mill of Wisconsin, then the mill of Wisconsin should be accorded the same rate to enable it to market its product in competition with lumber produced upon the coast.

It is our impression, however, that even at a low rate only the higher grades of hardwood would move to the coast, and while it hardly seems possible to introduce into lumber tariffs any scale of value, we are inclined to think that where, as in the present case, only the most valuable grades can and will move under a particular rate, that fact may be somewhat considered. The lumber is worth more and the shipper can afford to pay more for its transportation. This fact does differentiate the west-bound from the east-bound movement and perhaps justifies a somewhat higher rate upon the former.

The defendants also urge that there are competitive conditions under which the eastern rate is made, and suggest that, for this reason, it should not be taken as a standard by which to fix the west-bound charge.

Pacific coast lumber comes into competition with that produced in Wisconsin and Minnesota, and also with that from the southern forests. The lumber produced in all these sections can be, in the main, devoted to the same purposes. Whether the product from one territory or from the other shall be used depends upon the price at which it can be purchased and the price is materially affected by the rate of transportation. Rates from the Pacific coast have been made with a view to giving the lumber manufactured there an entrance into eastern markets, and the effect of any considerable advance in those rates must be to exclude that lumber, temporarily at least, from many markets in which it has previously been sold.

The complainants assert that they also meet competition upon the Pacific coast which must be recognized. The birch shipped to the coast is used almost exclusively in interior work. The oak is used partly for interior finish and partly in the construction of implements and other articles made in some part of wood and requiring some strong and heavy wood in their construction. Woods suitable for house finish are brought to the Pacific coast from Mexico, from South America, and from the Philippines. Oak which seems to compete at all points with American oak is brought in from Japan and Siberia. This lumber bears no duty if imported in the log or rough-hewed, and for this reason it is generally imported in that form and sawed upon the Pacific coast. Mills have been and are being established for this purpose. The testimony leaves no doubt that the use of hardwood lumber is largely increasing upon the Pacific coast and that this increase is being supplied, to a considerable extent, from foreign countries. The rates at which this foreign lumber moves are water rates and extremely low. It was said that Japanese oak came in upon a tariff of 35 cents per 100 pounds.

With this foreign lumber the complainants certainly do compete, and without doubt that competition in the future will be even more keen than in the past. The prices at which this lumber sells, however, are high, and the nature of the use to which it is put is such, in many cases, that a slight difference in the price does not determine what lumber shall be used, but 10 cents per 100 pounds amounts to from \$4 to \$4.50 per 1,000 feet upon this hardwood, and it can not be doubted that a difference in price of this amount does exercise a controlling influence, to a considerable extent, in the sale of hardwood lumber. To permanently increase the cost of American hardwood upon the Pacific coast by \$4.50 per 1,000 feet would be to place that product under a very serious handicap in its competition with foreign hardwoods.

While this is so, however, that competition is not as acute as in case of soft-wood lumber. With hardwood there is but a single high grade, while with soft wood all grades are in competition.

There is competition upon the Pacific coast in the sale of this hard wood which we must recognize, but that competition is not of the same active kind, the freight rate is not of the same controlling importance that it is in case of soft-wood lumber from the west. We feel that competitive conditions on the whole justify a somewhat lower rate east than is applied west.

The defendants also say that the lower rate is justified by the greater volume of traffic. Volume of traffic may excuse a lower rate partly because freight can be handled more cheaply in large quantities than in small, and partly because a railroad is justified in making a low rate to induce a large volume of traffic where the circumstances are such that the rate will have this effect. The first of these reasons refers to the cost of the service, and this we have already considered. While this hardwood lumber does not move west in trainloads, the character of the freight is such that it can be moved at the convenience of the carrier and that single carloads may therefore be retained at junction points until they can be consolidated into trains of any desired weight. This element is not in favor of the eastern movement, but probably on the whole, of the western movement. The second reason, that the low rate is necessary in order to secure a large volume of traffic, is a competitive one which has also just been referred to. This eastern rate is required both in the interest of the producer upon the Pacific coast and of the consumer in the east, and of the carrier.

The position of the complainants—that if the carriers make a rate of 50 cents from the west to Chicago, they should make a corresponding rate from Chicago to the west—we do not think, therefore, is well taken. The west-bound rate may properly be higher than the east-bound rate.

The complainants also rely with confidence upon the fact that these defendants for many years maintained in effect a lower rate than the present. Below is given a table which shows the history of these rates to Pacific coast terminals from 1888 down to the present time.

Rates in cents per 100 pounds.

	New York common points.	Pitts- burg common points.	Cincin- nati common points.	Chicago common points.	Missis- sippi River points.	Miss- ouri River points.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
January 16, 1888, to March 5, 1888.....	110	99	94	88	85	80
March 6, 1888, to August 31, 1888.....	108	97	92	86	82	75
September 1, 1888, to December 31, 1888....	100	100	100	100	82	75
January 1, 1889, to April 24, 1893.....	100	95	90	86	82	75
April 25, 1893, to April 11, 1894.....				86	82	75
April 12, 1894, to February 21, 1896.....				75	75	75
February 22, 1896, to June 23, 1897.....		75	75	75	75	75
June 24, 1897, to January 17, 1904.....	75	75	75	75	75	75
January 18, 1904, to date.....	85	85	85	85	85	85

The defendants claim that these lumber rates are the product of water competition. At the present time, as appears from the testimony in this record, hardwood lumber does not move, to any considerable extent, to the Pacific coast from points east of Buffalo and Pittsburg, but such has not always been the case. Some years ago such lumber was produced in the New England states and was transported from there by water to Pacific coast points. It is doubtless true that the rates established from the Atlantic seaboard in 1888 were influenced by water competition.

The complainant argues that this could not have been true, since the rate from New York was higher than the rate from Chicago or the Missouri River, although there was no water competition at Chicago; but, at that time, what were known as "graded" rates were generally in effect from territory east of the Missouri River to Pacific coast terminals; that is, the rate somewhat decreased going west from the Atlantic seaboard. When once water competition established a rate from New York the carriers, by agreement among themselves, applied a less rate from various western points of origin. For this reason the rate from New York, although induced by water competition, was higher than that from Chicago where no such competition existed.

For some four years, beginning in 1893, transcontinental rates were in a most demoralized condition. It will be seen from the above table that on April 12, 1894, a rate of 75 cents was established from Chicago common points and other territory west. This was really an extension of the Missouri River rate, which had been in effect ever since March 6, 1888, as far east as Chicago, and may very likely have been induced by the disturbances above referred to. In 1897 when the differences, which had led to this disturbance in transcontinental rates were composed and the rates restored, the 75-cent rate at Chicago was not advanced, but was simply extended to the eastern seaboard. It will be seen, therefore, that for a period of about ten years the defendants maintained a rate of 75 cents from the territory in question. It also fairly appears that this rate during that period of ten years was not forced by water competition. For four years from 1893 to 1897, the rate did not apply from the Atlantic seaboard at all, and since 1894 only an insignificant amount of lumber has moved from the east upon this rate. The testimony of one witness was that hardwood lumber had been shipped from points in Tennessee and Kentucky to the Atlantic seaboard, and thence taken by water to the Pacific coast; but, although requested to furnish a statement of some such shipment, the witness has not done so. Neither, so far as this record discloses, were there any other condi-

tions which required or compelled these defendants to maintain, during this period, an abnormally low rate upon lumber. It appears, therefore, that for ten years previous to January, 1904, these defendants voluntarily maintained, as a rate suitable to be applied to the movement of this traffic, a tariff of 75 cents per 100 pounds.

This Commission has often said that where a rate is voluntarily established and maintained for a considerable period this fact, although not conclusive, is strong evidence of the reasonableness of the rate. The force of this presumption is greatly weakened and might be altogether destroyed by the circumstances under which the rate was established and maintained; but if no particular reason is shown for the putting in of the rate, if no commercial or competitive condition prevents the maintenance of a higher rate, if, in other words, the maintenance of this rate has been *voluntary* upon the part of the carrier, the force of the admission becomes exceedingly strong. In this case, as already suggested, we find no cause which has operated to compel these defendants to maintain a lower rate for the transportation of this lumber than in their judgment was just and fair during these ten years. Some justification should therefore be shown for its advance.

The defendants do justify this upon the ground that it was rendered necessary by increased cost of operation. In two instances the Commission has expressed the opinion that similar advances made for the same reason, at about this time, were not justified; that while cost of operation had increased, increase in traffic and improved methods of handling the business had more than made good to the carriers the advance in the prices of supplies and labor. *Re Proposed Advance in Freight Rates*, 9 I. C. C. Rep., 382; *In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points*, 11 I. C. C. Rep., 238.

These investigations did not relate to the transcontinental lines which are mainly involved in this proceeding, but we have, within the year, conducted extended investigations which do involve the financial operations of all these transcontinental systems, and we have no hesitation in saying that the conclusions reached by us with respect to those advances would apply with still greater force in case of these defendants; for nowhere has the increase of traffic been greater and the saving in operating cost more marked than upon these transcontinental railroads. We should certainly scrutinize with care any advance in rates made by these lines upon the sole ground that their revenues were insufficient.

That is but another way of saying that the advance in question ought not to be permitted unless the original rate was abnormally low and the present rate is clearly reasonable.

As said by Knapp, chairman, in *Marten v. L. & N. R. R.* (9 I. C. C. Rep., 581, 589:

Lumber is inexpensive freight, and much below the average in cost of transportation, while only a few other commodities furnish to carriers a larger tonnage. For these reasons, among others, it is universally accorded rates of transportation that are relatively low.

It is stated in the brief of the defendants, who are also the defendants here, filed in the cases involving rates east bound from the mouth of Washington and Oregon, that the average rate per ton-mile of the railroads of the United States on lumber is 6 mills. We have information as to the correctness of this statement, but it is probably true that, as applied to hauls of 1,000 miles and over, the ton-mile rate is less than 6 mills. The distance from Chicago to San Francisco is about 2,250 miles, and this would perhaps be a fair average distance for the actual haul of this hardwood lumber from producing points in the east to consuming points upon the Pacific coast. A rate of 75 cents applied to this distance would yield substantially 6 mills per ton-mile. Now, as a general proposition we think that the transportation of lumber over these transcontinental lines, with both a gross income and a net income per mile much above the average for the whole United States, with a density of traffic material higher than the average, with a cost of operation below the average, 7 mills per ton-mile is sufficient, even though that lumber be of somewhat higher grade and should perhaps bear a somewhat higher rate than lumber on the average.

The Commission has just held in *Thompson v. Illinois Central R. R. Co.*, 13 I. C. C. Rep., 657, that a rate of 12 cents per 100 pounds equivalent to about 6 mills per ton-mile, for the movement of this same oak lumber from Memphis to New Orleans is excessive and has established a rate of 10 cents per 100 pounds, equaling about 5 mills per ton-mile. To one not familiar with conditions it might seem inconsistent to allow a rate of 7 mills per ton-mile for the long transcontinental haul, while we require the establishment of a 10 mill per ton-mile rate for a haul of only 400 miles. There is, however, no analogy between the movement of the traffic in the two cases. The line of the Illinois Central between Memphis and New Orleans is practically a water grade, and freight can be moved at extremely low cost. The general level of rates upon the line of the railroad is far below that upon the transcontinental lines involved in this proceeding. The volume of traffic to which our decision applies is much greater in case of the movement to New Orleans than with the transcontinental movement. We feel confident that the 10-cent rate from Memphis to New Orleans is as profitable to the carrier as is the 75-cent rate to the Pacific coast to the defendants in this case.

We do not therefore sustain the claim of the complainants that the rate on west-bound lumber should be no higher than that east bound; but we are of the opinion that the present rate west bound of 85 cents from Chicago and Chicago points and from Mississippi River points, including Memphis, is excessive and should not exceed 75 cents per 100 pounds. This allows the defendants a rate one-third higher upon the western movement than we have established upon the east bound.

One reason advanced by the defendants in support of the reasonableness of the 85-cent rate is the fact that this rate applies as a blanket rate all the way to the Atlantic seaboard. The lumber handled by the complainants is mainly shipped from Wisconsin points and from Memphis and similar points. In considering the reasonableness of this rate we have treated Chicago and Memphis as typical points of origin. The considerations which lead to the conclusion that a rate of 75 cents is sufficient from these points would not induce a similar conclusion as to more distant points. This rate will therefore be made applicable from Chicago and Chicago points and from Mississippi River points which include Memphis. If the defendants desire, they may apply a higher rate from territory farther east; we can not upon the record intelligently indicate how much higher.

It may be noted that this permits in reality a considerable advance in the total charges of the defendants for handling this hardwood lumber. The original 75-cent rate applied from territory east of Memphis, in which this oak largely originates, and the record shows that the average division of carriers west of Memphis did not exceed 66 cents.

The complainants claim reparation by reason of shipments made under the 85-cent rate. The defendants deny that the complainants should be awarded such reparation, even though the Commission be of the opinion that that rate is and has been excessive, for the reason that no damage upon the part of the complainants has been established.

This case shows that hardwood lumber has moved to the Pacific coast in larger quantities since the rate was advanced in 1904 than it did previously. The use of hardwood upon the Pacific coast has very much increased. Importations from foreign countries have been greater and shipments from the east have also grown. The amount of lumber sent west from these points of origin is insignificant in comparison with the total amount handled, and the price is but little influenced by the market upon the Pacific coast. The dealer in Wisconsin or at Memphis has charged substantially the same price whether his sales were in the east or for export or for shipment to California, and this means, of course, that the advance in the freight

rate has been added to the price paid by the consumer. The defendants say that it follows that the complainants who have paid this freight rate have not actually been injured.

It appeared that one witness suspended operations upon the Pacific coast owing to the advance in the rate, and other witnesses were of the opinion that more lumber would have been sold under the 75-cent rate. It is impossible to say, therefore, to what extent these complainants may have been actually damaged by the advance in this rate, if the word damage is to be interpreted and applied as claimed by the defendants.

Such is not, in our opinion, the proper meaning of this term. These complainants were shippers of hardwood lumber to this destination and they were entitled to a reasonable rate from the defendants for the service of transportation. An unreasonable rate was in fact exacted. They were thereby deprived of a legal right and the measure of their damage is the difference between the rate to which they were entitled and the rate which they were compelled to pay. If complainants were obliged to follow every transaction to its ultimate result and to trace out the exact commercial effect of the freight rate paid, it would never be possible to show damages with sufficient accuracy to justify giving them. Certainly these defendants are not entitled to this money which they have taken from the complainants, and they ought not to be heard to say that they should not be required to refund this amount because the complainants themselves may have obtained some portion of this sum from the consumer of the commodity transported.

Neither should these complainants be permitted to slumber upon their rights and to accumulate against these defendants a claim for damages which may not represent in its entirety an actual loss to the complainants. The burden of an unjust freight rate usually rests upon the consumer, who can not and does not recover. Claims for reparation should therefore be promptly presented and actively prosecuted. We shall allow the complainants reparation in this case in the amount of the difference between the rate actually paid and the rate of 75 cents, which is established and which is found to have been a reasonable rate from the date of the filing of this petition, but following the case of *Thompson v. Illinois Central R. R. Co.*, *supra*, no reparation will be allowed by reason of shipments made previous to the date of the filing of the complaint.

If the parties can not agree upon the amounts, further testimony will be taken.

An order will now issue establishing the rate found to be reasonable, and the case will be retained for further proceedings in the matter of reparation.

CASES DISPOSED OF BY THE COMMISSION WITHOUT REPORT DURING THE TIME COVERED BY THIS VOLUME.

998. **FREDONIA LINSEED OIL WORKS v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.**—Rates on linseed oil cake from Fredonia, Kans., to San Francisco and other Pacific coast points. *F. E. Lyster* for complainant. *Gardiner Lathrop* and *Robert Dunlap* for defendant. February 3, 1908. Dismissed for want of prosecution.

1080. **E. I. DUPONT DE NEMOURS POWDER COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY.**—Rates on imported brimstone, Philadelphia to Platteville, Wis. *Wm. Coyne, J. B. D. Edge,* and *J. P. Laffey* for complainant. *S. A. Lynde* for defendant. April 6, 1908. Dismissed on motion of complainant.

1159. **FARMERS' BUSINESS ASSOCIATION v. CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.**—Insufficient number of cars and other inadequate facilities at Holbrook, Nebr. *E. C. Clark* for complainant. *C. M. Dawes* and *Hale Holden* for defendant. May 5, 1908. Dismissed on motion of complainant.

1164. **MOISE BROTHERS COMPANY v. CHICAGO, ROCK ISLAND & EL PASO RAILWAY COMPANY ET AL.**—Rates on coal, Pictou and other points in Colorado to Santa Rosa, N. Mex. *J. J. Moise* for complainant. *E. E. Whitted, E. B. Peirce, C. L. Wellington,* and *Spoons, Thompson & Barwise* for defendants. March 2, 1908. Complaint satisfied, case discontinued.

1189. **J. H. WERBELOVSKY v. BUFFALO, ROCHESTER & PITTSBURG RAILWAY COMPANY ET AL.**—Local rates on window glass from Bradford, Pa., to Bushwick, L. I., instead of through rate. *J. H. Werbelovsky* for complainant. *Ralph Peters, Charles Heebner, J. E. Reynolds, J. F. Keany,* and *Harris, Havens, Beach & Harris* for defendants. January 14, 1908. Dismissed for want of prosecution.

1196. **CHARLES A. SIBLEY v. UNION PACIFIC RAILROAD COMPANY.**—Discrimination against interstate passengers by exacting 3 cents per mile for interstate transportation and but 2 cents per mile for intrastate. *J. G. Beeler* for complainant. *J. N. Baldwin* for defendant. March 10, 1908. Dismissed on request of complainant.

1254. **FLORALA SAW MILL COMPANY v. CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.**—Rates on yellow pine lumber from
13 I. C. C. Rep. 681

Southwestern Freight Association and Mississippi Valley territory to points in New York and New England. *E. A. Swingle, H. White, and G. T. Dunlop* for complainant. *R. B. Cooke, John Wilson, G. S. Patterson, G. V. Massey, Ed. Baxter, C. B. North, R. Walton Moore, and W. A. Parker* for defendants. April 6, 1908. Dismissed on motion of complainant.

1270. *MERRIAM & HOLMQUIST COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY*.—Discrimination in elevator charges at Omaha. *B. G. Burbank and J. C. Wharton* for complainant. *S. Lynde* for defendant. January 13, 1908. Dismissed on motion of complainant.

1271. *MERRIAM & HOLMQUIST COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY*.—Discrimination in elevator charges. *B. G. Burbank and J. C. Wharton* for complainant. *J. M. Dickinson, F. Bowes, and Blewett Lee* for defendant. January 13, 1908. Dismissed on motion of complainant.

1272. *MERRIAM & HOLMQUIST COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY*.—Discrimination in elevator charges. *B. G. Burbank and J. C. Wharton* for complainant. *A. G. Briggs and J. C. Erdall* for defendant. January 13, 1908. Dismissed on motion of complainant.

1273. *MERRIAM & HOLMQUIST COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY*.—Discrimination in elevator charges. *B. G. Burbank and J. C. Wharton* for complainant. *Wm. Ellis* for defendant. January 13, 1908. Dismissed on motion of complainant.

1299. *ALLOUEZ MINERAL SPRING COMPANY v. GREEN BAY & NORTHWESTERN RAILROAD COMPANY ET AL.*—Rates on natural mineral waters from Green Bay, Wis., to Goldfield, Nev. *J. P. Hoeffel* for complainant. *W. C. Modisett, J. N. Baldwin, Wm. F. Herrin, P. Dunne, S. A. Lynde, and F. C. Dillard* for defendants. March 9, 1908. Dismissed on motion of complainant.

1311. *FORT SMITH TRAFFIC BUREAU v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.*—Rates on preserves and pickles from Fort Smith to Texas as compared with rates from Kansas City. *C. H. Ivers* for complainant. *J. A. Kibler, T. J. Freeman, E. Peirce, F. C. Dillard, T. S. Busbee, Spooner, Thompson & Barwick and Baker, Botts, Parker & Garwood* for defendants. April 14, 1908. Dismissed on motion of complainant.

1318. *NEW ORLEANS BOARD OF TRADE, LTD. v. ST. LOUIS & NORTHWESTERN RAILWAY COMPANY ET AL.*—Advances in rates on rough rice to New Orleans. *John A. Smith* for complainant. *H. E. Farr* for defendant. December 2, 1907. Dismissed on motion of complainant.

1320. *SUNDERLAND BROTHERS COMPANY ET AL. v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—Change in rates

signment rules and charges on coal, lumber, shingles, lime, and cement in territory tributary to Omaha and Lincoln. *Francis A. Brogan* for complainants. *J. M. Dickinson, Blewett Lee, John N. Baldwin, F. C. Dillard, R. A. Brown, S. E. Stohr, Thomas Wilson, E. B. Peirce, Hale Holden, R. W. Moore, and S. A. Lynde* for defendants. June 9, 1908. Dismissed on motion of complainant; complaint satisfied.

1336. *E. H. LEWIS LUMBER COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.*—Violation of sections 1, 2, and 3 in rates on lumber from West Scio and Mount Angel, Oreg., to Toledo, Ohio, and other points. *Austin E. Griffiths* for complainant. *F. C. Dillard, S. A. Lynde, Henry Russel, Hale Holden, A. P. Burgwin, J. B. Kerr, A. G. Briggs, G. F. Brownell, P. F. Dunne, J. N. Baldwin, Wm. F. Herrin, O. E. Butterfield, W. W. Cotton, P. L. Williams, R. A. Brown, H. A. Taylor, and Glennon, Cary, Walker & Howe* for defendants. February 4, 1908. Dismissed on motion of complainant.

1346. *ARTHUR S. CORE v. ERIE RAILROAD COMPANY.*—Violation of section 1 in rates on potatoes from Kingsley, Mich., to New York City. *Arthur S. Core* for complainant. *George F. Brownell* for defendant. March 16, 1908. Dismissed on motion of complainant.

1352. *DETMER WOOLEN COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.*—Rates on tailors' samples of woolen dry goods for advertising, New York to San Francisco. *Samuel Hoffman* for complainant. *Robert Dunlap, T. J. Norton, Douglas Swift, Thos. H. Gill, W. S. Jenney, and J. H. Clarke* for defendants. April 6, 1908. Dismissed on motion of complainant.

1353. *DETMER WOOLEN COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.*—Rates on tailors' samples of woolen goods for advertising purposes, New York to Kansas City. *Samuel Hoffman* for complainant. *W. S. Jenney, Douglas Swift, and W. H. Blodgett* for defendants. April 6, 1908. Dismissed on motion of complainant.

1354. *DETMER WOOLEN COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.*—Rates on tailors' samples of woolen goods for advertising purposes, New York to Chicago. *Samuel Hoffman* for complainant. *Douglas Swift and W. S. Jenney* for defendants. April 6, 1908. Dismissed on motion of complainant.

1355. *DETMER WOOLEN COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.*—Rates on tailors' samples of woolen goods for advertising purposes, New York to Seattle, Wash. *Samuel Hoffman* for complainant. *Douglas Swift, W. S. Jenney, Thos. H. Gill, and W. R. Begg* for defendants. April 6, 1908. Dismissed on motion of complainant.

1358. *PARLIN & ORENDORFF MACHINERY COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.*—
13 I. C. C. Rep.

Advances in rates on agricultural implements and vehicles from Connersville, Ind., to St. Louis by changing classification. *H. J. Blake* for complainant. *L. J. Hackney* and *F. L. Littleton* for defendants. April 6, 1908. Dismissed on motion of complainant.

1360. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY v. SOUERS & LANGDON.—Undercharge on coal from East St. Louis to Grundy Center, Iowa. *E. B. Peirce*, *J. T. Parrish*, *J. H. Johnson* and *Carroll Wright* for complainant. *Souers & Langdon* for defendants. December 26, 1907. Dismissed on motion of complainant.

1368. THEODORE HOFELLER & COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.—Rates on waste paper, Buffalo to Appleton and Kimberly, Wis., in excess of locals via Milwaukee. *Julius Hofeller* for complainant. *S. A. Lynde* and *W. O. Rowley* for defendants. April 14, 1908. Dismissed on motion of complainant.

1374. W. E. WALTON v. CHESAPEAKE BEACH RAILWAY COMPANY.—Rate on coal in bags from Washington to Chesapeake Beach, Md. *W. E. Walton* for complainant. December 26, 1907. Dismissed on motion of complainant.

1377. DEEDS & MANLEY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.—Changes in classification; rates on vehicles from Connersville, Ind., to East St. Louis advanced; discrimination in rates on vehicles from Connersville, Ind., to East St. Louis proper and when destined beyond. *G. B. Riefting* for complainant. *L. J. Hackney* for defendant. April 6, 1908. Dismissed on motion of complainant.

1378. COVINGTON MACHINE COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY.—Advance in rates on coke from New River district, West Virginia, to Covington, Va., and on coke when used in the manufacture of pig iron to be shipped over defendant's lines. *A. C. Braxton* for complainant. *H. T. Wickham* for defendant. January 31, 1908. Dismissed on satisfactory adjustment of issue.

1390. ANDERSON, CLAYTON & COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.—Practices in compression of cotton in transit at points in Oklahoma destined beyond the State and abroad. *J. C. Hucheson* for complainant. *E. B. Peirce* for defendant. May 4, 1908. Dismissed on motion of complainant.

1396. FORESTER HALL BOX COMPANY ET AL. v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.—Overcharge on gum lumber, Gilmore, Sedgewick, Wise, and Big Creek, Ark., to Memphis, Tenn. St. Louis, and Kansas City. *J. E. Murphy* for complainants. *E. B. Peirce* for defendant. April 6, 1908. Dismissed on motion of complainants.

1399. J. E. BAKER v. CUMBERLAND VALLEY RAILROAD COMPANY ET AL.—Advance in rates on limestone for furnace use from Bunka Hill, Va., to Allegheny and Bessemer, Pa., as compared with rates

from Martinsburg, W. Va. *Wm. S. Hoerner* for complainant. *Thorpe & Elder, Geo. D. Dixon, G. S. Patterson, Geo. V. Massey, John G. Wilson, and Reed, Smith, Shaw & Beal* for defendants. March 2, 1908. Dismissed on motion of complainant.

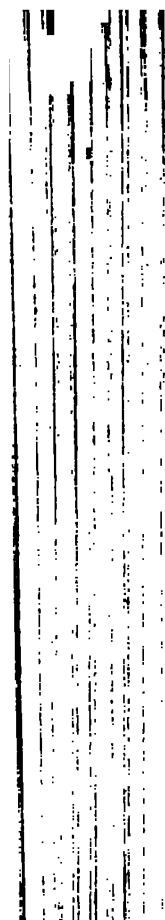
1403. *NEBRASKA STATE RAILWAY COMMISSION v. MISSOURI PACIFIC RAILWAY COMPANY*.—Rates on wheat and corn from Cooke, Burr, and Douglas, Nebr., via Omaha, to St. Louis, compared with rates via Nebraska City, Nebr. *Clark Perkins* for complainant. *J. C. Jeffery* and *M. L. Clardy* for defendant. March 2, 1908. Dismissed on motion of complainant.

1424. *F. KEICH MANUFACTURING COMPANY v. SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY ET AL.*—Rates on barrel staves from Nettleton, Ark., and Corpus Christi, Tex. *C. W. Durbin* for complainant. *J. C. Jeffery, M. L. Clardy, and A. W. Houston* for defendants. May 4, 1908. Dismissed on motion of complainant.

1427. *O. C. EVANS & COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY*.—Overcharge on cabbage, Brownsville, Tex., to Kansas City; charges on weight inclusive of refrigeration instead of destination weight. *C. W. Durbin* for complainant. *Robert Dunlap, T. J. Norton, and T. R. Morrow* for defendant. April 14, 1908. Dismissed on motion of complainant.

1534. *CARSTENS PACKING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable charge for the transportation of car in addition to charge for commodity. *Ellis, Fletcher & Evans* for complainant. May 4, 1908. Dismissed by Commission because barred by statute of limitations.

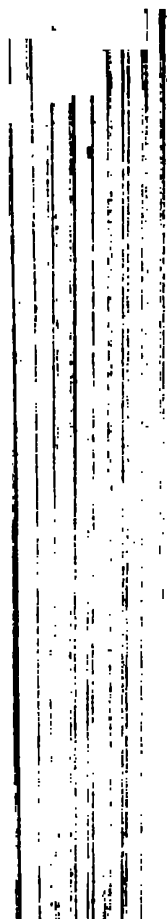
1566. *ORIENT COTTON PRODUCTS CO. v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable rates on cotton seed from points on lines of defendants to Kansas City. *S. H. Cowan* for complainant. June 9, 1908. Dismissed on motion of complainant.



APPENDIX.

COMPLAINTS IN WHICH REPARATION WAS AUTHOR-
IZED ON INFORMAL PLEADINGS.

NOVEMBER 30, 1907, TO JUNE 3, 1908.



COMPLAINTS IN WHICH REPARATION WAS AUTHORIZED ON INFORMAL
PLEADINGS. NOVEMBER 30, 1907, TO JUNE 3, 1908.

562. *John T. Leonard v. Atlanta, Birmingham & Atlantic Railroad Company.* December 3, 1907. Refund of \$39.30 on carload of sugar from Brunswick, Ga., to Roanoke, Ala., on account of excessive rate.

563. *In the matter of relief of agents of the Chicago, St. Paul, Minneapolis & Omaha Railway Company.* Refund of \$31.56 on shipments of apples representing difference between weight based on minimum of 30,000 pounds and actual gross weight.

564. *National Wholesale Lumber Dealers' Association v. Southern Railway Company.* December 1, 1907. Refund of \$19.68 on carload of lumber from Nantahala, N. C., to New York, N. Y., on account of misrouting by defendant's agent.

565. *Wabash Portland Cement Company v. Wabash Railroad Company.* December 3, 1907. Refund of \$708 on 236 carloads of cement from Stroh, Ind., to Detroit, Mich., on account of failure to absorb switching charges.

566. *J. Rose & Company v. Nashville, Chattanooga & St. Louis Railway Company.* November 30, 1907. Refund of \$14.47 on 3 carloads of excelsior from Dalton, Ga., to Memphis, Tenn., on account of excessive minimum carload weight.

567. *H. I. Ruth v. Missouri Pacific Railway Company.* December 3, 1907. Refund of \$22.22 on 2 carloads of oak lumber from Knizer, Mo., to Moline, Ill., on account of misrouting by defendant's agent.

568. *W. S. Weyer v. Missouri Pacific Railway Company.* December 3, 1907. Refund of \$123.60 on carload of nails from Kokomo, Ind., to Ottawa, Kans., reshipped to St. Joseph, Mo., on account of misrouting by defendant's agent.

569. *Boston Excelsior Company v. Canadian Pacific Railway Company.* December 4, 1907. Refund of \$86.40 on carload of excelsior from Milo, Me., to Dayton, Ohio, on account of excessive rate.

570. *Harper & Company v. Wells, Fargo & Company Express.* December 3, 1907. Refund of \$51.60 on shipments of fruit and vegetables from Excelsior, Ark., to Pittsburg, Kans., on account of excessive rate.

571. *Sigma Lumber Company v. Central of Georgia Railway.* November 30, 1907. Refund of \$11.70 on carload of lumber from Sigma, Ala., to Michigan City, Ind., on account of excessive through rate.

572. *Vernon Cantaloupe Growers & Shippers' Association v. Wells, Fargo & Company Express.* November 30, 1907. Refund of \$357.55 on 3 carloads of cantaloupes from Vernon, Tex., to Denver, Colo., on account of excessive rate.

573. *Phillips Sheet & Tin Plate Company v. Baltimore & Ohio Railroad Company.* November 30, 1907. Refund of \$1,440.40 on 23 carloads of sheet bars from Pittsburg, Pa., to Clarksburg, W. Va., on account of erroneous publication of rate schedule.

574. *H. A. Saggan v. Chicago & North Western Railway Company.* November 30, 1907. Refund of \$24.13 on 17 carloads of cattle, sheep, and hogs from Ceylon, Minn., to Chicago, Ill., on account of oversight in reprinting of tariff.

575. *C. F. Woodward & Company et al. v. New York Central & Hudson River Railroad Company.* December 5, 1907. Refund of \$1,258.99 on shipments of stone from various points to New York, N. Y., on account of advance in terminal charges without notice to complainants who could have shipped via other lines at the old and lower rate.

576. *Omaha Elevator Company and Trans-Mississippi Grain Company v. Union Pacific Railroad Company.* December 7, 1907. Refund of \$1,921.74 to Omaha Elevator Company and refund of \$2,089.04 to Trans-Mississippi Grain Company on shipments of grain from points in Nebraska to Council Bluffs, Iowa, on account of excessive rates.

577. *American Sugar Refining Company v. Illinois Central Railroad Company.* December 6, 1907. Refund of \$66.78 on carload of sugar from New Orleans, La., to Gallatin, Tenn., on account of carrier's oversight in publishing rate schedule.

578. *H. I. Ruth v. Missouri Pacific Railway Company.* December 4, 1907. Refund of \$10.81 on carload of oak lumber from Harville, Mo., to Aurora, Ill., on account of misrouting by carrier's agent.

579. *C. L. Centlivre Brewing Company v. Toledo, St. Louis & Western Railroad.* December 7, 1907. Refund of \$2 on shipment of empty beer barrels and bottles from Decatur, Ind., to Fort Wayne, Ind., on account of misrouting by carrier's agent.

580. *Western Produce Company v. Atlanta & St. Andrews Bay Railway Company.* March 9, 1908. Refund of \$150.97 on 4 carloads of watermelons from Cottondale, Fla., to Chicago, Ill., on account of excessive rate.

581. *Idaho Lumber Company v. Oregon Short Line Railroad Company et al.* January 3, 1908. Refund of \$115.50 on 2 carloads of coal from Erie, Colo., to Twin Falls, Idaho, on account of excessive rate.

582. *Minneapolis Cedar & Lumber Company v. Northern Pacific Railway Company.* December 17, 1907. Refund of \$14.20 on shipments of lumber on account of excessive rate.

583. *Morris & Company v. Atchison, Topeka & Santa Fe Railway Company.* December 30, 1907. Refund of \$48.87 on 2 carloads of cotton-seed oil from Weleetka Junction, Okla., and 1 carload of cotton-seed oil from Ada, Okla., to Chicago, Ill., on account of excessive rate.

584. *Shoal Creek Coal Company v. Toledo, St. Louis & Western Railroad Company.* December 12, 1907. Refund of \$9.52 on carload of coal from Panama, Ill., to Kokomo, Ind., on account of excessive minimum carload weight.

585. *Morey & Company v. Chesapeake & Ohio Railway Company et al.* December 20, 1907. Refund of \$245.39 on shipment of 313 casks of china clay from Newport News, Va., to Kankauna, Wis., on account of contracts having been made at the rate on which claim is made and rate was canceled by Chicago & Northwestern Railway Company through a misunderstanding.

586. *Hanford Produce Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* December 30, 1907. Refund of \$27.80 on shipment of eggs from Sioux City, Iowa, to Minneapolis, Minn., on account of excessive rate caused by classification rule as to straps on egg cases.

588. *Schloss & Kahn v. Seaboard Air Line Railway.* January 6, 1908. Refund of \$89.10 on shipment of sugar bagging from Savannah, Ga., to Union Springs, Ala., on account of excessive rate.

589. *Northwestern Leather Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company.* December 11, 1907. Refund of \$10.54 on shipment of bark extract from New York, N. Y., to Sault Ste. Marie, Mich., on account of excessive rate.

590. *Colorado Fuel & Iron Company v. Atchison, Topeka & Santa Fe Railway Company.* December 9, 1907. Refund of \$420.36 on carload of steel pans from Joliet, Ill., to Minnequa, Colo., on account of excessive rate.

591. *Bienville Lumber Company v. Louisville & Nashville Railroad Company.* December 12, 1907. Refund of \$32.13 on carload of lumber from Alberta, La., to Chester, La., on account of misrouting by carrier's agent.

592. *Paterson Crushed Stone Company and Morris County Crushed Stone Company v. Delaware, Lackawanna & Western Railroad Company.* December 9, 1907. Refund of \$208.77 to Paterson Crushed Stone Company and refund of \$36.74 to Morris County Crushed Stone Company on 71 carloads of crushed stone from Paterson and Millington, N. J., to Chenango Forks, N. Y., on account of excessive rate.

593. *J. Stirmann v. Wabash Railroad Company.* December 9, 1907. Refund of \$31.40 on carload of apples from Jameson, Mo., to Winona, Minn., on account of misrouting by carrier's agent.

594. *Volkmer Lumber Company v. Missouri Pacific Railway Company.* December 7, 1907. Refund of \$8.27 on shipment of oak lumber from Kensett, Ark., to Galesburg, Ill., on account of misrouting by carrier's agent.

595. *Stewart & Booth Timber Company v. St. Louis, Iron Mountain & Southern Railway Company.* December 7, 1907. Refund of \$45.48 on shipment of cedar posts from Cotter, Ark., to Rossville, Ind., on account of erroneous diversion by carrier's agent.

597. *Norman Milling & Grain Company et al. v. Atchison, Topeka & Santa Fe Railway Company.* December 9, 1907. Refund of \$183.07 to Norman Milling & Grain Company, refund of \$38.41 to Model Roller Mills, refund of \$88.70 to C. M. Maple, refund of \$106.45 to Purcell Mill & Elevator Company, refund of \$55.06 to J. H. Shaw and refund of \$83.48 to Smith Grain & Elevator Company on 8 carloads of seed wheat from points in Kansas to points in Oklahoma on account of agreement made for charitable purpose to refund to a lower than tariff rate if wheat was used for seed purposes.

598. *Crookston Milling Company v. Great Northern Railway Company.* December 9, 1907. Refund of \$1,909.76 on 39 carloads of wheat from Climax, Nielsville and Fisher, Minn., to Crookston, Minn., on account of change in original billing and assessment of local rates in addition to milling in transit rate, shipment having been delivered short of original destination.

599. *Jones & Laughlin Steel Company v. Pittsburg & Lake Erie Railroad Company.* December 10, 1907. Refund of \$30.03 on 4 carloads of steel billets from Pittsburg, Pa., to Kokomo, Ind., on account of excessive rate.

600. *Lutcher & Moore Lumber Company v. Texas & New Orleans Railroad Company.* December 18, 1907. Refund of \$11.88 on carload of lumber from Orange, Tex., to Chicago, Ill., on account of misrouting by carrier's agent.

601. *Roy Campbell v. Galveston, Harrisburg & San Antonio Railway Company.* December 28, 1907. Refund of \$6 on carload of watermelons from Candler, Tex., to Fort Worth, Tex., thence diverted to Chicago, Ill., on account of excessive re-shipment charge.

602. *J. D. Hollingshead Company v. St. Louis Southwestern Railway Company.* January 6, 1908. Refund of \$6.65 on carload of oak staves from Paragould, Ark., to Keokuk, Iowa, on account of misrouting by carrier's agent.

603. *J. E. Stewart Produce Company v. Missouri, Kansas & Texas Railway Company.* January 6, 1908. Refund of \$58.19 on carload of potatoes from Peters, Ill., to Muskogee, Okla., on account of excessive rate.

605. *Iola Portland Cement Company v. Missouri, Kansas & Texas Railway Company.* December 21, 1907. Refund of \$32.30 on carload of cement from Iola, Kans., to Council Bluffs, Iowa, on account of excessive rate.

606. *Crowder & Company v. Missouri, Kansas & Texas Railway Company.* December 17, 1907. Refund of \$21.88 on shipment of snapped corn from Falls City, Okla., to Howe, Tex., on account of excessive rate.

607. *Frank Geisler v. Michigan Central Railroad Company.* January 9, 1908. Refund of \$16.88 on shipment of manure from Union Stock Yards, Ill., to Derby, Mich., on account of excessive rate.

608. *Clarinda Poultry, Butter, and Egg Company v. Illinois Central Railroad Company.* December 14, 1907. Refund of \$70.87 on 4 carloads of lumber from Cairo, Ill., to Creston, Iowa, on account of misrouting by carrier's agent.

609. *Norfolk Hardwood Company v. Atlantic Coast Line Railroad Company.* December 12, 1907. Refund of \$6 on 3 carloads of gum logs from Manning, N. C., to Pinners Point, Va., on account of excessive rate.

610. *Trans-Mississippi Grain Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* December 12, 1907. Refund of \$11.75 on carload of oats from Winside, Nebr., to Council Bluffs, Iowa, on account of excessive rate.

612. *McGowan Brothers v. Northern Pacific Railway Company.* January 3, 1908. Refund of \$24.18 on carload of wagons from Winona, Minn., to Spokane, Wash., on account of excessive rate.

614. *J. O. McIntosh v. San Pedro, Los Angeles & Salt Lake Railroad Company.* February 19, 1908. Refund of \$118 on shipment of ice from Los Angeles, Cal., to Las Vegas, Nev., on account of excessive rate.

615. *H. I. Ruth v. Missouri Pacific Railway Company.* March 20, 1908. Refund of \$11.22 on shipment of oak lumber from Fisk, Mo., to Moline, Ill., on account of misrouting.

616. *Hammond Iron Works v. Pennsylvania Railroad Company.* May 6, 1908. Refund of \$11.60 on shipment of steel tank from Warren, Pa., to New Orleans, La., on account of excessive rate.

617. *Lottman-Myers Manufacturing Company v. Gulf, Colorado & Santa Fe Railway Company.* January 8, 1908. Refund of \$75.65 on carload of iron beds from Richmond, Ind., to Houston, Tex., on account of excessive rate.

618. *Illinois Glass Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.* January 2, 1908. Refund of \$47.55 on 2 shipments of glass bottles from Gas City, Ind., to Winona, Minn., on account of excessive rate.

619. *Battle Creek Breakfast Food Company v. Wabash Railroad Company.* February 7, 1908. Refund of \$88.06 on 6 carloads of cereals from Quincy, Ill., to eastern point on account of inadvertence in canceling rate.

621. *C. L. Gray Lumber Company v. Mobile, Jackson & Kansas City Railroad Company.* January 22, 1908. Refund of \$26.05 on carload of lumber from Stringer, Miss. to Chattanooga, Tenn., on account of misrouting by carrier's agent.

623. *Valley Construction & Manufacturing Company v. Eastern Railway Company of New Mexico.* December 9, 1907. Refund of \$52 on carload of cement plaster from Elida, N. Mex., to Roswell, N. Mex., on account of excessive rate.

624. *Bradford Wholesale Furniture Manufacturing Company v. Virginia & Southwestern Railway Company.* December 11, 1907. Refund of \$8 on shipment of chairs from Elizabethton, Tenn., to Nashville, Tenn., on account of misrouting by carrier's agent.

625. *Antrim-Todd Lumber Company v. St. Louis Southwestern Railway Company.* December 10, 1907. Refund of \$4.10 on carload of lumber from Antrim, La., to Enid, Okla., on account of misrouting by carrier's agent.

626. *Town of Opelousas, La., v. Morgan's Louisiana & Texas Railroad & Steamship Company.* December 4, 1907. Refund of \$33 on shipment of cast-iron pipe from Bessemer, Pa., to Opelousas, La., on account of excessive rate.

627. *Gisholt Machine Company v. Illinois Central Railroad Company et al.* March 20, 1908. Refund of \$43.89 on shipments of castings from Quincy, Ill., to Madison, Wis., on account of excessive rate.

628. *Southern Cotton Oil Company v. Atlantic Coast Line Railroad Company.* December 9, 1907. Refund of \$87.83 on 3 shipments of cotton-seed oil from South Neck, N. C., to Savannah, Ga., on account of excessive rate.

629. *H. I. Ruth v. Missouri Pacific Railway Company.* December 10, 1907. Refund of \$7.50 on carload of oak lumber from Harviell, Mo., to Moline, Ill., on account of misrouting by carrier's agent.

632. *W. F. Bartles v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* January 6, 1908. Refund of \$303.66 on 14 carloads of sheep from Belle Fourche, S. Dak., to Hubbard, Nebr., on account of excessive rate.

634. *Norris Safe & Lock Company v. Great Northern Railway Company.* December 26, 1907. Refund of \$74.35 on carload of desks from Cincinnati, Ohio, to Seattle, Wash. on account of excessive minimum carload weight.

635. *Jones & Laughlin Steel Company v. Chicago, Burlington & Quincy Railway Company.* December 26, 1907. Refund of \$21.77 on carload of steel from Pittsburg, Pa., to East Moline, Ill., on account of excessive rate.

637. *American Hide & Leather Company v. Chicago & Northwestern Railway Company.* January 3, 1908. Refund of \$3 on shipments of hides from Chicago, Ill., to Milwaukee, Wis., on account of error in tariff.

638. *Coyle & Diehl v. Cumberland Valley Railroad Company.* December 7, 1907. Refund of \$48.64 on shipment of wheat from East Fayetteville, Pa., to Chilhowie, Va. on account of excessive rate.

639. *Toaffe & Company v. Southern Pacific Company.* December 13, 1907. Refund of \$13.57 on 6 carloads of sheep from Reno, Nev., to San Francisco, Cal., on account of erroneous publication of rate schedule.

641. *Nebraska Bridge Supply & Lumber Company v. Nashville, Chattanooga & Louisville Railway Company.* January 3, 1908. Refund of \$17.68 on shipment of posts from Farley, Ala., to Omaha, Nebr., on account of oversight in publication tariff.

642. *Cuthbert Grocery Company v. Norfolk & Western Railway Company.* December 21, 1907. Refund of \$44.92 on shipment of mixed produce from Rural Retreat, Va., to Cuthbert, Ga., on account of excessive rate.

645. *In the matter of relief of agent at Duluth of Great Northern Railway Company.* January 23, 1908. Refund of \$11.27 on 2 carloads of maple flooring from Wells, Minn. to Duluth, Minn., on account of excessive rate.

646. *Riverside Milling & Fuel Company v. Southern Pacific Railway Company.* January 29, 1908. Refund of \$55.02 on carload of vetch seed from Tangent, Oreg., to Riverside, Cal., on account of failure to divert as per instructions and excessive rate.

648. *L. Fish Furniture Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.* March 25, 1908. Refund of \$44.82 on 7 shipments of furniture from Shelbyville, Ind., to Chicago, Ill., on account of excessive rate.

651. *Nangle Pole & Tie Company v. Chicago & Northwestern Railway Company.* February 3, 1908. Refund of \$12 on 4 carloads of poles originating on the Minnesota & International Railway on account of unreasonable switching charges.

652. *Advance Lumber Company v. St. Louis Southwestern Railway Company.* December 16, 1907. Refund of \$4.90 on carload of oak lumber from England, Ark., to Richford, Vt., on account of misrouting by carrier's agent.

653. *Humbird Lumber Company v. Northern Pacific Railway Company.* January 24, 1908. Refund of \$24.80 on 3 carloads of lumber from Sand Point, Idaho, to McClusky, N. Dak., on account of excessive rate.

654. *City of Weiser v. Oregon Short Line Railroad Company.* February 19, 1908. Refund of \$130.10 on shipments of coal from North Kemmerer, Wyo., to Weiser, Idaho, on account of error in publishing tariff.

655. *E. D. Carlton v. Missouri Pacific Railway Company.* December 16, 1907. Refund of \$6.90 on shipment of household goods from Jewell City, Kans., to La Junta, Colo., on account of misrouting by carrier's agent.

656. *Superior Manufacturing Company v. Great Northern Railway Company.* January 24, 1908. Refund of \$130.32 on mixed carload of salt and lime from Superior, Wis., to Saco, Mont., on account of clerical error in publishing tariff.

657. *Grandjean & Derby v. Trinity & Brazos Valley Railway Company.* March 18, 1908. Refund of \$157.26 on shipments of lumber from stations on its line to Laredo, Tex., destined to Monterey, Mexico, on account of excessive rate.

660. *New Prague Flouring Mill Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$0.47 on shipment of flour from New Prague, Minn., to Cresson, Pa., on account of excessive estimated weight.

661. *New Prague Flouring Mill Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$0.58 on shipment of flour from New Prague, Minn., to Nanty Glo, Pa., on account of excessive estimated weight.

662. *George Tileston Milling Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$1.24 on shipment of flour from St. Cloud, Minn., to Hartford, Conn., on account of excessive estimated weight.

663. *Listman Mill Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$0.96 on carload of flour from La Crosse, Wis., to York, Pa., on account of excessive estimated weight.

664. *Commander Mill Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$0.66 on carload of flour from Duluth, Minn., to Rolfe, Pa., on account of excessive estimated weight.

665. *Minnesota Flour Mill Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$0.51 on carload of flour from Stillwater, Minn., to Hamburg, Pa., on account of excessive weight.

666. *Eagle Roller Mill Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$0.98 on carload of flour from New Ulm, Minn., to Harrisburg, Pa., on account of excessive estimated weight.

667. *Jennison Brothers & Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$1.51 on carload of flour from Janesville, Minn., to Lebanon, Pa., on account of excessive estimated weight.

668. *Everett, Aughenbaugh Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$1.04 on carload of flour from Waseca, Minn., to Mont Clare, Pa., on account of excessive estimated weight.

669. *Wylie, Son & Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$0.98 on carload of flour from Milwaukee, Wis., to Baltimore, Md., on account of excessive estimated weight.

671. *San Pedro, Los Angeles & Salt Lake Railroad Company v. Chicago & Northwestern Railway Company.* December 1, 1907. Refund of \$273 on shipment of 3 dining cars from Chicago, Ill., to Salt Lake City, Utah, on account of excessive rate.

674. *L. Goldsmith & Son v. Southern Railway Company.* December 10, 1907. Refund of \$30.69 on carload of trunk slats from Johnson City, Tenn., to Newark, N. J., on account of excessive rate.

675. *O. L. Owen v. Eastern Railway Company of New Mexico.* December 11, 1907. Refund of \$40 on 2 carloads of sand from Fort Sumner, N. Mex., to Clovis, N. M., on account of excessive rate.

676. *Railway Lumber & Supply Company v. Missouri Pacific Railway Company.* December 9, 1907. Refund of \$54.01 on carload of oak ties from Dermott, Ark., Lincoln, Nebr., on account of misrouting by carrier's agent.

677. *Penn Lumber Company v. Missouri Pacific Railway Company.* January 1908. Refund of \$38.56 on shipment of lumber from Bierne, Ark., to Fairport, N., on account of misrouting by carrier's agent.

679. *Carnegie Steel Company v. Pennsylvania Railroad Company.* January 2, 1908. Refund of \$113.73 on 7 carloads of ore from Chester, Pa., to Munhall, Cochran, Clinton, and Demora, Pa., on account of excessive rate.

680. *Estabrook-Skeele Lumber Company v. Illinois Central Railroad Company.* December 16, 1907. Refund of \$18.64 on shipment of spokes from Jackson, Tenn., Stoughton, Wis., on account of excessive rate.

681. *Central Broom Company v. Missouri Pacific Railway Company.* December 1907. Refund of \$1.65 on 4 shipments of brooms from Jefferson City, Mo., to Owatonna, Minn., on account of misrouting by carrier's agent.

683. *Batelle & Renwick v. Mallory Steamship Company.* December 16, 1907. Refund of \$55.28 on shipment of sulphur from New York, N. Y., to Chattanooga, Tenn., on account of excessive rate.

685. *Menrath Brokerage Company v. Central of Georgia Railway Company.* January 25, 1908. Refund of \$11.74 on shipment of canned goods from Baltimore, Md., to Kansas City, Mo., on account of excessive rate.

686. *American Granite Company v. New York Central Lines.* January 24, 1908. Refund of \$13.12 on 6 boxes of granite from Hardwich, Vt., to Delaware, Ohio, on account of misrouting by carrier's agent.

687. *Clark & Wilson Lumber Company v. Oregon Railroad & Navigation Company.* February 28, 1908. Refund of \$135.12 on carload of lumber from Linton, Oreg., Curries, Nev., on account of misrouting by carrier's agent.

688. *H. E. Simon v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* December 21, 1907. Refund of \$16.74 on shipments of cattle from Bonesteel, S. D., to Winslow, Nebr., on account of excessive rate.

689. *National Wholesale Lumber Dealers' Association v. Norfolk & Western Railway Company.* January 22, 1908. Refund of \$26.07 on carload of lumber from Ruston, Va., to East Pittsburg, Pa., on account of misrouting by carrier's agent.

690. *McCaw Manufacturing Company v. Georgia Railroad.* December 14, 1907. Refund of \$100.17 on 12 shipments of soap from Macon, Ga., to Newbern, N. C., on account of excessive rate.

692. *Lyon Cypress Lumber Company v. Yazoo & Mississippi Valley Railroad Company.* February 29, 1908. Refund of \$5.58 on 2 carloads of lumber from Garyville, La., to Robinson, Ill., on account of excessive rate.

693. *Standard Novelty Works v. St. Louis Southwestern Railway Company.* December 16, 1907. Refund of \$53 on 2 shipments of lumber from Waldo, Ark., to Galena, Kan., on account of misrouting by carrier's agent.

694. *Western Tie & Timber Company v. Missouri Pacific Railway Company.* December 13, 1907. Refund of \$16.13 on carload of oak piling from McAlmont, Ark., Hannibal, Mo., on account of misrouting by carrier's agent.

695. *American Milling Company v. Illinois Central Railroad Company.* December 27, 1907. Refund of \$120 on shipments of cotton-seed meal from Dyersburg, Tenn., to Linden, Ind., on account of misrouting by defendant's agent.

696. *Agent, Chicago, Burlington & Quincy Railroad Company v. St. Louis Southwestern Railway Company.* December 12, 1907. Refund of \$11.25 on carload of staves from Paragould, Ark., to South Omaha, Nebr., on account of misrouting by carrier's agent.

697. *American Hide & Leather Company v. Erie Railroad Company.* March 3, 1908. Refund of \$85.44 on shipments of bark from points in Michigan to Ballston, N. Y., on account of excessive rate.

700. *C. S. Christenson Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* December 23, 1907. Refund of 60 cents on carload of flour from Maple, Minn., to Blair, Wis., on account of misrouting by carrier's agent.

701. *W. T. Ferguson Lumber Company v. Louisiana & Arkansas Railway Company.* December 17, 1907. Refund of \$3.83 on carload of lumber from Minden, La., to Hawk, Mo., on account of misrouting by carrier's agent.

702. *American Locomotive Company v. New York Central & Hudson River Railroad Company.* December 23, 1907. Refund of \$23,237.50 on shipment of locomotives from Schenectady, N. Y., to Sault Ste. Marie, Ontario, on account of error in not re-issuing tariff.

703. *Spring Valley Iron & Ore Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* December 28, 1907. Refund of \$440.80 on shipments of ore from Virginia, Minn., to Spring Valley, Wis., on account of excessive minimum carload weight.

704. *Pecan Gap Cotton Oil Company v. Gulf, Colorado & Santa Fe Railway Company.* January 11, 1908. Refund of \$402.42 on 3 carloads of cotton seed from Davis, Okla., to Pecan Gap, Tex., on account of excessive rate.

706. *Volkner Lumber Company v. Missouri Pacific Railway Company.* December 16, 1907. Refund of \$8.87 on carload of lumber from Tuckerton, Ark., to Galesburg, Ill., on account of misrouting by carrier's agent.

707. *Theo. Hoeffler & Company v. Southern Railway Company.* December 17, 1907. Refund of \$2.23 on shipment of rope from Nashville, Tenn., to Chagrin Falls, Ohio, on account of misrouting by carrier's agent.

708. *Antle-Linley Grain Company v. Missouri Pacific Railway Company.* December 16, 1907. Refund of \$25.51 on carload of corn from Atchison, Kans., to Nashville, Tenn., on account of misrouting by carrier's agent.

710. *American Smelting and Refining Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* March 31, 1908. Refund of \$3,213.74 on shipments of ore from Goldfield, Nev., to Murray, Utah, on account of excessive rate.

711. *Dana & Company v. Philadelphia & Reading Railway Company.* December 26, 1907. Refund of \$28.32 on shipment of ferro-silicon from Philadelphia, Pa., to South Bethlehem, Pa., on account of excessive rate.

712. *Duluth Superior Milling Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of 60 cents on shipment of flour from Duluth, Minn., to Williamsport, Pa., on account of excessive estimated weight.

713. *Dighton Furnace Company, North Dighton, Mass., and White, Warner Company, Taunton, Mass. v. New York, New Haven & Hartford Railroad Company.* December 16, 1907. Refund of \$25 and \$60, respectively, on shipments of pig iron from East Providence, R. I., to North Dighton and Weir Branch, Mass., on account of excessive rate.

714. *Baird Produce Company v. Manistee & Northeastern Railroad Company.* January 11, 1908. Refund of \$36.43 on shipment of potatoes from Glengarry, Mich., to Chicago, Ill., on account of excessive rate.

715. *Pine Belt Lumber Company v. St. Louis & San Francisco Railroad Company.* December 23, 1907. Refund of \$14.34 on 2 carloads of lumber from Swink and Fort Towson, Okla., to Lebanon and Republic, Mo., on account of excessive rate.

716. *Jennison Brothers & Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of \$1.27 on shipment of flour from Janesville, Minn., to Lebanon, Pa., on account of excessive estimated weight.

717. *Wylie, Son & Company v. Erie & Western Transportation Company.* January 4, 1908. Refund of 98 cents on shipment of flour from Milwaukee, Wis., to Baltimore, Md., on account of excessive estimated weight.

722. *Menomonee Hydraulic Press Brick Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* January 8, 1908. Refund of \$2 on shipment of brick from Brickton, Ill., to Menomonee, Wis., on account of excessive minimum carload weight.

724. *G. H. Barnes Hardwood Lumber Company v. St. Louis Southwestern Railway Company.* December 23, 1907. Refund of \$21.36 on shipment of lumber from Paragould, Ark., to Oelwein, Iowa, on account of misrouting by carrier's agent.

725. *W. C. Wood Lumber Company v. Gulf & Ship Island Railroad Company.* December 23, 1908. Refund of \$10.20 on shipment of lumber from Collins, Miss., to McKees Rocks, Pa., on account of excessive rate, due to error in tariff, making same illegal.

726. *T. J. Moss Tie Company v. St. Louis & San Francisco Railroad Company.* January 17, 1908. Refund of \$574 on 23 carloads of ties from Joppa, Ill., to Sanford and St. Marys, Ind., on account of excessive rate.

728. *William Buchanan v. St. Louis Southwestern Railway Company.* December 28, 1907. Refund of \$15.02 on shipment of lumber from Springhill, La., to Calumet, Mich., on account of misrouting by carrier's agent.

731. *J. W. Biles Company v. Baltimore & Ohio Southwestern Railroad Company.* January 1, 1908. Refund of \$134.04 on shipments of dried grain from Louisville, Ky., to St. Bernard, Ohio, on account of excessive rate.

732. *Agent, Southern Railway Company v. Yazoo & Mississippi Valley Railroad Company.* December 27, 1907. Refund of \$13.62 on 25 bales of cotton from Yazoo, Miss., to Piedmont, Ala., on account of misrouting by carrier's agent.

734. *Rock Island Sash & Door Works v. Chicago, Burlington & Quincy Railroad Company.* December 27, 1907. Refund of \$4.19 on carload of sash and doors from Rock Island, Ill., to Paterson, N. J., on account of excessive rate.

735. *Ten Mile Lumber Company v. Gulf & Ship Island Railroad Company.* December 19, 1907. Refund authorized on carload of lumber from Tennile, Miss., to Louisville, Ky., on account of error in tariff which made it illegal and void at the time shipment moved.

736. *Schwarzchild & Sulzberger Company v. Chicago, Burlington & Quincy Railroad Company.* February 28, 1908. Refund of \$17.57 on 6 carloads of meat from Kansas City, Mo., to Denver, Colo., on account of oversight in publishing tariff.

738. *Greenville Carolina Power Company v. Southern Railway Company.* April 25, 1908. Refund of \$465.43 on shipment of contractor's outfit from Greenville, S. C., to Andover, Mass., and Bar Mills, Me., on account of excessive rate.

739. *M. Hayman & Company v. Central of Georgia Railway Company.* January 3, 1908. Refund of \$100.03 on 2 carloads of waste from Albany, Ga., to New York City, on account of excessive rate.

748. *Charles Dreifus Company v. Norfolk & Western Railway Company.* January 2, 1908. Refund of \$65.39 on 3 carloads of scrap iron from Ronasoke, Va., to Donaghmore, Pa., on account of excessive rate.

750. *Headley Lumber Company v. Gulf & Ship Island Railroad Company.* December 27, 1907. Refund of \$19.30 on carload of lumber from Collins, Miss., to Hume, Ill., on account of error in tariff making same illegal and void at the time shipment moved.

757. *Wilson-Popham Cattle Company v. Eastern Railway Company of New Mexico.* January 22, 1908. Refund of \$41.80 on shipment of cattle from Pecos, Tex., to Kansas City, Mo., on account of excessive rate.

760. *Aragon Mills v. Seaboard Air Line Railway.* January 22, 1908. Refund of \$52.95 on shipment of coal from Dora, Ala., to Aragon, Ga., on account of excessive rate.

761. *Universal Portland Cement Company v. Southern Pacific Company.* January 30, 1908. Refund of \$691.94 on 10 shipments of cement from Buffington, Ind., to Pacific coast points on account of excessive minimum carload weight.

765. *Lutcher & Moore Cypress Lumber Company v. Yazoo & Mississippi Valley Railroad Company.* February 1, 1908. Refund of \$10.78 on 2 carloads of lumber from Lutcher, La., to Robinson, Ill., on account of excessive rate.

766. *Industrial Lumber Manufacturing Company v. Gulf & Ship Island Railroad Company.* December 21, 1907. Refund of \$27.76 on 3 carloads of lumber from Lumberton and Tennile, Miss., to McKees Rocks, Pa., on account of excessive rate.

767. *Eastman, Gardner & Company v. Gulf & Ship Island Railroad Company.* December 23, 1907. Refund of \$32.64 on 4 shipments of lumber from Laurel, Miss., to Gillespie and Kewanee, Ill., Russiaville, Ind., and St. Louis, Mo., on account of excessive rate due to error in tariff making same illegal.

769. *Barrett Manufacturing Company v. Chicago, Milwaukee & St. Paul Railway Company.* February 15, 1908. Refund of \$21 on shipment of roofing paper from St. Joseph, Mich., to Charles City, Iowa, on account of excessive rate.

770. *First National Bank v. Adams Express Company.* December 30, 1907. Refund of \$260 on shipment of silver coin from Denver, Colo., to St. Louis, Mo., on account of excessive rate.

771. *W. W. Herron Lumber Company v. Gulf & Ship Island Railroad Company.* December 27, 1907. Refund of \$7.46 on shipment of lumber from Tennile, Miss., to Butler, Pa., on account of error in tariff making same void at time shipment moved.

772. *Peter Kuntz v. Gulf & Ship Island Railroad Company.* December 28, 1907. Refund of \$9.12 on shipment of lumber from Wiggins, Ind., to Middleton, Ind., on account of error in tariff making same illegal and void at time shipment moved.

773. *Nicola, Stone & Meyers Company v. Gulf & Ship Island Railroad Company.* March 6, 1908. Refund of \$6.37 on shipment of lumber from Epps, Miss., to Cairo, Ill., on account of excessive rate.

776. *D. G. Cutler Company v. Great Northern Railway Company.* December 28, 1907. Refund of \$53.24 on carload of salt from Duluth, Minn., to Glasgow, Mont., on account of oversight in republication of tariff.

777. *Marblehead Lime Company v. Atchison, Topeka & Santa Fe Railway Company.* December 17, 1907. Refund of \$20 on carload of lime from Brillion, Wis., to Joliet, Ill., on account of excessive rate.

783. *Taylor Milling & Elevator Company v. Great Northern Railway Company.* January 28, 1908. Refund of \$318.02 on 2 carloads of machinery and 2 carloads of lumber from Murdock, Minn., to Lethbridge and Alberta, on account of excessive rate.

785. *Studebaker Brothers Company v. Oregon Short Line Railroad Company.* February 19, 1908. Refund of \$478.40 on shipment of vehicles from South Bend, Ind., to Logan and Malad, Utah, on account of excessive rate.

786. *Gulfport Lumber Company v. Gulf & Ship Island Railroad Company.* December 23, 1907. Refund of \$15.22 on shipment of lumber from Maxie, Miss., to Savanna, Ill., on account of error in tariff making same illegal.

787. *Chicago Lumber & Coal Company v. Gulf & Ship Island Railroad Company.* December 23, 1907. Refund of \$8 on shipment of lumber from Gandai, Miss., to Peru, Ind., on account of excessive rate.

788. *Agent at Twin Falls, Idaho, v. Oregon Short Line Railroad Company.* January 31, 1908. Refund of \$83.36 on shipments of emigrant movables from points on its line to Twin Falls, Idaho, on account of inadvertence in canceling rate.

789. *H. D. Lee Mercantile Company v. Union Pacific Railroad Company.* March 20, 1908. Refund of \$5.94 on carload of watermelons from Kansas City, Mo., to Salina, Kans., on account of excessive rate.

796. *Florida Cotton Oil Company v. Southern Railway Company.* December 28, 1907. Refund of \$27.15 on carload of cotton seed from Bremen, Ga., to Jacksonville, Fla., on account of excessive rate.

798. *Peerless Transit Company v. Pennsylvania Railroad Company.* February 21, 1908. Refund of \$20.34 on shipment of tank car of gasoline from Struthers, Pa., to East St. Louis, Ill., on account of excessive rate.

800. *Manhattan Electrical Supply Company v. Pennsylvania Railroad Company.* January 29, 1908. Refund of \$82.07 on six carloads of manganese ore from Baltimore, Md., to Ravenna, Ohio, on account of misunderstanding resulting in canceling of rate.

801. *Northwestern Fuel Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* January 18, 1908. Refund of \$2 on shipment of lumber from Superior, Wis., to Minnesota Transfer, Minn., on account of misrouting by carrier's agent.

802. *Peerless Transit Company v. Pennsylvania Railroad Company.* January 23, 1908. Refund of \$31.47 on shipments of oil from Titusville and Struthers, Pa., to Memphis, Tenn., on account of excessive rate.

804. *Parsons Band Cutter & Self Feeder Company v. Chicago, Rock Island & Pacific Railway Company.* January 13, 1908. Refund of \$1.97 on shipment from Axtell, Nebr., to Newton, Iowa, on account of misrouting by carrier's agent.

807. *William F. Allen & Company v. Central Railroad Company of New Jersey.* January 21, 1908. Refund of \$39.04 on shipment of plastering hair from Wautauga, Tenn., to Newark, N. J., on account of excessive rate.

810. *Hickman, Williams & Company v. Pennsylvania Railroad Company.* January 24, 1908. Refund of \$11.76 on carload of silicon from Jersey City, N. J., to Pittsburg, Pa., on account of inadvertence in publishing rate schedule.

812. *E. A. Upstill & Company v. Baltimore & Ohio Railroad Company.* January 22, 1908. Refund of \$554.94 on shipments of coal from Benwood, W. Va., to Milton Siding, N. J., on account of excessive rate.

813. *L. W. Pratt, Secretary, Tacoma Chamber of Commerce v. Northern Pacific Railway Company.* January 6, 1908. Refund of \$209.10 on shipment of exhibits from Tacoma, Wash., to Pittsburg, Pa., on account of delay in securing permission to publish rate.

814. *E. W. Mudge & Company v. Philadelphia & Reading Railway Company.* January 4, 1908. Refund of \$26.87 on 2 carloads of scrap iron from Trenton, N. J., to Mount Dallas, Pa., on account of excessive rate.

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816. *Western Meat Company v. Southern Pacific Company.* January 30, 1908. Refund of \$261.20 on shipments of hogs and sheep from various points to San Francisco, Cal., on account of error in publishing tariff.

819. *Interstate Oil Company v. Kansas City Southern Railway Company.* January 1908. Refund of \$6.78 on 11 shipments of oil from Kansas City, Mo., to Joplin, Mo., account of excessive rate.

825. *N. L. Williams v. Atchison, Topeka & Santa Fe Railway Company.* January 1908. Refund of \$25.41 on carload of corn from Newkirk, Okla., to Ladonia, Tex., account of error in publishing tariff.

826. *Commercial Milling Company v. Canadian Pacific Railway Company.* January 3, 1908. Refund of \$18 on carload of flour from Detroit, Mich., to Ashland, Me., account of excessive rate.

827. *Utah Junk Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* February 21, 1908. Refund of \$435 on shipment of scrap iron from Las Vegas, Nev., Salt Lake City, Utah, on account of excessive rate.

829. *Kalamazoo Tank & Silo Company v. Michigan Central Railroad Company.* December 17, 1907. Refund of \$77.76 on shipment of silo material from Kalamazoo, Mich. to Cleveland, Wis., on account of excessive rate.

830. *Frank M. Cramer v. Toledo, St. Louis & Western Railroad Company.* December 12, 1907. Refund of \$84.72 on 41 carloads of coal from Coffeen, Ill., to Toledo, Ohio on account of cars not being large enough to carry the tariff minimum carload weight.

832. *Loudon Hosiery Mills v. Southern Railway Company.* January 21, 1908. Refund of 48.50 on 10 shipments of cotton hosiery from Loudon, Tenn., to various points on account of excessive rate.

834. *Wilson, Popham Cattle Company v. Southern Kansas Railway Company.* December 30, 1907. Refund of \$80.11 on shipments of cattle from Pecos, Tex., to White Deer, Tex., on account of excessive rate.

835. *W. P. Devereux Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* December 18, 1907. Refund of \$17 on carload of hay from Bloomington, Wis., to Cairo, Ill., on account of misrouting by carrier's agent.

836. *Northwestern Leather Company v. Canadian Pacific Railway Company.* December 14, 1907. Refund of \$66.82 on 18 shipments of bark from Dayton and Brantford, Ontario, to Sault Ste. Marie, Mich., on account of excessive rate.

837. *Ream & Roebeck v. Michigan Central Railroad Company.* December 28, 1907. Refund of \$79.10 on 3 carload shipments of manure from Chicago, Ill., to Niles, Mich. on account of excessive rate.

839. *Atlantic Export Company v. New York, New Haven & Hartford Railroad Company.* February 24, 1908. Refund of \$102.45 on shipments of brewers' grain from Providence, R. I., to New York, N. Y., for export on account of excessive rate.

840. *Booth-McClintock Company v. Atchison, Topeka & Santa Fe Railway Company.* April 14, 1908. Refund of \$188.32 on shipment of dried fruit from Fresno, Cal., to Spokane, Wash., on account of excessive rate.

841. *Thomas W. Collins & Company v. Southern Pacific Company.* April 1908. Refund of \$16.89 on shipment of empty beer packages from Oakland, Cal., Milwaukee, Wis., on account of error by carrier in not following shipping instructions.

843. *Chicago Lumber & Coal Company v. Gulf & Ship Island Railroad Company.* January 2, 1908. Refund of \$81.22 on 10 carloads of lumber from and to various points on account of error in tariff making same illegal and void at time shipments moved.

844. *Lewis-Vulger-Loomis Company v. Northern Pacific Railway Company.* January 3, 1908. Refund of \$23.18 on 2 shipments of grapes from Montrose, Iowa, Fargo, N. Dak., on account of excessive rate.

848. *J. Watts Kearney & Sons v. Morgan's Louisiana & Texas Railroad & Steamship Company.* January 29, 1908. Refund of \$28.64 on shipment of lime from Nashville, Tenn., to Oliver, La., on account of excessive rate.

849. *American Iron & Steel Manufacturing Company v. Southern Pacific Company.* January 17, 1908. Refund of \$498.49 on shipment of railroad material from Reading, Pa., to De Quincy, La., on account of excessive rate.

850. *Pecos Valley Irrigated Land Company v. Pecos Valley Lines.* January 3, 1908. Refund of \$166.78 on carload of oats from Artesia, N. Mex., to El Paso, Tex., account of excessive rate.

851. *Finkbine Lumber Company v. Gulf & Ship Island Railroad Company*. December 27, 1907. Refund of \$110.78 on 13 carloads of lumber from Wiggins, Miss., to various points on account of error in tariff making same illegal and void at time shipment moved.

854. *Willow River Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. January 4, 1908. Refund of \$16.45 on carload of lumber from New Richmond, Wis., to Cactus, S. Dak., on account of misrouting by carrier's agent.

858. *Longville Long Leaf Lumber Company v. Shreveport, Alexandria & Southwestern Railway System*. April 29, 1908. Refund of \$759.80 on 9 carloads of sand from Loeb and Fletcher, Tex., to Longville, La., on account of excessive rate.

860. *Charles A. Schieren & Company v. Norfolk & Western Railway Company*. January 24, 1908. Refund of \$66.55 on carload of bark from Bristol, Va., to Kaulmont, Pa., on account of excessive rate.

861. *Moore & Munger v. Southern Railway Company*. February 18, 1908. Refund of \$18.71 on shipment of clay from Langley, S. C., to Carthage, N. Y., on account of error in publishing tariff.

864. *Morse Hardware Company v. Great Northern Railway Company*. April 30, 1908. Refund of \$35.20 on shipment of wheels from Terre Haute, Ind., to Bellingham, Wash., on account of excessive rate.

866. *Covina Fruit Exchange v. Southern Pacific Company*. January 18, 1908. Refund of \$999.75 on 3 carloads of oranges from Covina, Cal., to Monroe, La., Vicksburg, Miss., and Marshall, Tex., on account of excessive rate.

868. *S. A. Gibbs & Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. January 23, 1908. Refund of \$27.29 on shipment of shingles from Mount Vernon, Wash., to Jackson, Miss., on account of misrouting by carrier's agent.

870. *William Cameron & Company v. Texas & New Orleans Railroad Company*. January 27, 1908. Refund of \$7.44 on shipment of lumber from Nona, Tex., to Coalgate, Okla., on account of misrouting by carrier's agent.

873. *Cranberry Furnace Company v. Southern Railway Company*. February 17, 1908. Refund of \$4,446.29 on shipments of coke from Bluefield, W. Va., to Johnson City, Tenn., on account of rate having been inadvertently canceled by carrier.

874. *Lindsay Brothers v. Chicago & Northwestern Railway Company et al.* January 6, 1908. Refund of \$4 on shipments of twine from Milwaukee, Wis., to Spencer, Iowa, on account of excessive rate.

875. *Robinson Cider, Vinegar & Pickle Company v. Illinois Central Railroad Company*. January 6, 1908. Refund of \$23.34 on shipment of cider and vinegar from Benton Harbor, Mich., to Rockford, Ill., on account of excessive rate.

876. *M. R. Grant v. New Orleans & Northeastern Railroad Company*. January 9, 1908. Refund of \$7.20 on carload of lumber from Igo, Miss., to Casnovia, Mich., on account of excessive rate.

877. *Alphons Custodia Chimney Construction Company v. Central Railroad Company of New Jersey*. March 27, 1908. Refund of \$183.85 on shipment of brick from Sayreville, N. J., to Lafayette, Pa., on account of excessive rate.

879. *E. E. Doggett v. Atchison, Topeka & Santa Fe Railway Company*. January 27, 1908. Refund of \$75.07 on 2 shipments of coal from Burlingame, Kans., to Enid, Okla., on account of excessive rate.

880. *Lake County Manufacturing Company v. Dyersburg Northern Railroad Company*. April 17, 1908. Refund of \$397.96 on shipment of cotton-seed oil from Tiptonville, Tenn., to Chicago, Ill., on account of excessive rate.

881. *M. F. Albert et al. of G. A. R. v. Oregon Short Line Railroad Company*. January 13, 1908. Refund of \$148 return fare from Rathdrum, Idaho. G. A. R. encampment, to Spokane, Wash., etc., on account of misunderstanding as to date of meeting.

882. *Nevada Hills Mining Company v. Oregon Short Line Railroad Company*. February 19, 1908. Refund of \$356.38 on shipment of ore from Fallon, Nev., to Murray, Utah, on account of excessive rate.

885. *Island Paper Company v. Wisconsin Central Railway Company*. January 8, 1908. Refund of \$10 on carload of paper from Menasha, Wis., to Fort Wayne, Ind., on account of misrouting by carrier's agent.

886. *Firth-Sterling Steel Company v. Baltimore & Ohio Railroad Company.* January 23, 1908. Refund of \$87.20 on 5 carloads of brick from Uniontown, D. C., to siding near Uniontown, D. C., on account of excessive rate.

888. *Theodore Hofeller & Company v. Michigan Central Railroad Company.* February 7, 1908. Refund of \$91.07 on shipments of waste paper from Buffalo, N. Y., to Kimberly and Appleton, Wis., on account of excessive rate.

890. *E. V. Babcock & Company v. Louisville & Nashville Railroad Company.* February 10, 1908. Refund of \$28 on carload of lumber from Babcock, Ga., to Hopedale, Ohio, on account of misrouting by carrier's agent.

891. *Tennessee Coal, Iron & Railroad Company v. Alabama Great Southern Railroad Company.* January 14, 1908. Refund of \$9.45 on shipment of bar iron from Bessemer, Ala., to Corinth, Miss., on account of error in publishing tariff on part of Southern Railway Company.

894. *Fort Smith Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* February 3, 1908. Refund of \$29 on carload of rails from Memphis, Tenn., to Southard, Ark., on account of oversight in not canceling rate.

897. *Cardiff Gypsum Plaster Company v. Chicago Great Western Railway Company.* January 29, 1908. Refund of \$10.80 on carload of plaster from Fort Dodge, Iowa, to Bancroft, S. Dak., on account of misrouting by carrier's agent.

898. *Standard Box Company v. Atlantic Coast Line Railroad Company.* January 13, 1908. Refund of \$151.08 on shipments of cedar lumber from Tampa, Fla., to Sandusky, Ohio, on account of excessive rate.

900. *Philadelphia Steel Company v. Southern Railway Company.* January 24, 1908. Refund of \$142.17 on carload of railway track material from Steelton, Pa., to Mobile, Ala., on account of error in publishing rate schedule.

901. *Baird Produce Company v. Manistee & Northeastern Railroad Company.* January 13, 1908. Refund of \$28.68 on carload of potatoes from Glengarry, Mich., to Chicago, Ill., on account of excessive rate.

904. *Agent at Mankato, Minn., of Chicago, Rock Island & Pacific Railway Company v. Missouri Pacific Railway Company.* January 27, 1908. Refund of \$363.70 on 5 carloads of staves from Dermott, Ark., to Mankato, Minn., on account of misrouting by carrier's agent.

905. *Mrs. J. H. Ulrich v. Cornwall & Lebanon Railroad Company.* January 20, 1908. Refund of \$21.60 for ticket from Lebanon, Pa., to Denver, Colo., and return on account of misunderstanding between agent and complainant causing the latter to purchase ticket at regular one-way rate when a special excursion rate was in effect.

908. *W. L. Shropshire et al. v. Philadelphia & Reading Railway Company.* January 9, 1908. Refund of \$61.20 to W. L. Shropshire and \$72.48 to D. C. Blizzard on shipments of berries from Hammonton, N. J., to Springfield, Mass., Providence, R. I., and Boston, Mass., on account of excessive rate.

909. *A. Ambrosini v. Wisconsin Central Railway Company.* February 24, 1908. Refund of \$47.20 on shipment of household goods from St. Paul, Minn., to Los Angeles, Cal., on account of misrouting by carrier's agent.

910. *Texas Star Flour Mills v. Gulf, Colorado & Santa Fe Railway Company.* March 11, 1908. Refund of \$62 on carload of corn from Wayne, Okla., to Galveston, Tex., on account of carrier using car of 60,000 pounds capacity for its own convenience.

911. *L. B. Tebbetts & Sons Carriage Company v. Missouri Pacific Railway Company.* November 25, 1907. Refund of \$2.01 on shipment of huggies from St. Louis, Mo., to St. Martinsville, La., on account of misrouting by carrier's agent.

912. *Kansas Portland Cement Company v. Union Pacific Railroad Company.* December 11, 1907. Refund of \$161.12 on shipment of cement from Gas, Kans., to Whittier, Cal., on account of excessive rate.

913. *Ozan Lumber Company v. St. Louis, Iron Mountain & Southern Railway Company.* December 11, 1907. Refund of \$47.12 on shipment of lumber from Clarke, La., to Oronoque, Kans., on account of misrouting by carrier's agent.

914. *A. L. Houghton & Company v. Missouri Pacific Railway Company.* January 18, 1908. Refund of \$5.39 on shipment of oak lumber from Clover Bend, Ark., to Clinton, Iowa, on account of misrouting by carrier's agent.

916. *Chicago Lumber & Coal Company v. St. Louis Southwestern Railway Company.* January 24, 1908. Refund of \$17.65 on carload of lumber from Stables, La., to St. Elmo, Ill., on account of misrouting by carrier's agent.

917. *Central Broom Company v. Missouri Pacific Railway Company.* January 21, 1908. Refund of \$2.05 on 2 shipments of brooms from Jefferson City, Mo., to Yazoo City, Miss., on account of misrouting by carrier's agent.

918. *In the matter of relief of agents of Chicago, Burlington & Quincy Railroad Company.* February 14, 1908. Refund of \$139.40 on 3 carloads of lumber from Lothrop, Mont., to Oxford and Crawford, Nebr., and Wray, Colo., on account of excessive minimum carload weight.

919. *Carpenter Glass Lumber Company v. Great Northern Railway Company.* January 23, 1908. Refund of \$16.97 on carload of maple flooring from Wells, Mich., to Duluth, Minn., on account of excessive rate.

922. *United States Cast-Iron Pipe & Foundry Company v. Chicago & Northwestern Railway Company.* February 4, 1908. Refund of \$245.35 on 2 carloads of cast-iron pipe from East St. Louis, Ill., to Sturgis, S. Dak., on account of tariff not being clear and specific.

923. *Zeigler Coal Company v. Minneapolis & St. Louis Railroad Company.* January 14, 1908. Refund of \$106.18 on 2 carloads of coal from Zeigler, Ill., to Minneapolis, Minn., on account of excessive rate.

924. *R. E. Wood Lumber Company v. Virginia & Southwestern Railway Company.* January 22, 1908. Refund of \$16.04 on carload of lumber from Buladeen, Ky., to Arcanum, Ohio, on account of misrouting by carrier's agent.

926. *Superior Manufacturing Company v. Great Northern Railway Company.* January 24, 1908. Refund of \$86.70 on carload of lime and salt from Superior, Wis., to Malta, Mont., on account of clerical error in publishing tariff.

928. *Bisinger & Company v. Northern Pacific Railway Company.* January 30, 1908. Refund of \$143.90 on shipments of hides, etc., from Spokane, Wash., to Portland, Oreg., on account of excessive rate.

929. *Pressed Steel Car Company v. Erie Railroad Company.* February 18, 1908. Refund of \$1.97 on 12 sets of McCord Draft Center from Burnham, Ill., to McKee's Rocks, Pa., on account of misrouting by carrier's agent.

930. *T. M. Partridge Lumber Company v. Minneapolis & St. Louis Railroad Company.* January 17, 1908. Refund of \$9.88 on shipment of lumber from Iron River, Wis., to Humboldt, Iowa, on account of excessive minimum carload weight.

932. *Misoula Mercantile Company v. Northern Pacific Railway Company.* February 24, 1908. Refund of \$39.41 on carload of sugar from San Francisco, Cal., to Taft, Mont., on account of excessive rate.

933. *L. Stark & Company v. Manistee & Northeastern Railroad Company.* May 8, 1908. Refund of \$69.90 on shipments of potatoes from Buckley, Mich., to Chicago, Ill., on account of error in publishing tariff.

934. *Payson-Smith Lumber Company v. St. Louis Southwestern Railway Company.* January 25, 1908. Refund of \$29.40 on carload of lumber from Henderson Mound, Mo., to Lincoln, Nebr., on account of misrouting by carrier's agent.

935. *Berthold & Jennings v. St. Louis Southwestern Railway Company.* May 22, 1908. Refund of \$8.17 on carload of lumber from Weiner, Ark., to Oelwein, Iowa, on account of misrouting by carrier's agent.

936. *Great Western Oil Company v. Colorado & Southern Railway Company.* March 19, 1908. Refund of \$480.84 on carload of oil from Robinson, Ill., to Denver, Colo., on account of excessive rate.

940. *Southern Saw Mill Company v. Texas & Pacific Railway Company.* January 25, 1908. Refund of \$57.16 on 3 carloads of lumber from Baileys Spur, La., to St. Louis, Mo., on account of excessive rate.

942. *Golconda Cattle Company v. Southern Pacific Company.* February 1, 1908. Refund of \$88.50 on shipment of lumber from Truckee, Cal., to Golconda, Nev., on account of excessive rate.

943. *Gunther Brothers v. St. Louis & San Francisco Railroad Company et al.* January 31, 1908. Refund of \$55 on 10 carloads of live stock from Haverhill, Kans., to Chicago, Ill., on account of error in publishing tariff.

945. *Whitney & Company v. Atchison, Topeka & Santa Fe Railway Company.* January 27, 1908. Refund of \$11.11 on shipment of paper boxes from Leominster, Mass., to Phoenix, Ariz., on account of excessive rate.

950. *White Sulphur Lumber Company v. Louisiana & Arkansas Railway Company.* February 1, 1908. Refund of \$50.20 on a locomotive from Lima, Ohio, to Jena, La., on account of excessive rate.

954. *Benedict, Downs & Company v. New York, New Haven & Hartford Railroad Company.* February 21, 1908. Refund of \$4.74 on 3 shipments of coal screenings from Great Barrington, Mass., to Ansonia, Conn., on account of excessive rate.

955. *Minneapolis Paper Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company.* January 17, 1908. Refund of \$23.93 on carload of building paper from Rockdale, Ohio, to Minneapolis, Minn., on account of excessive rate.

959. *Joseph Ferrigo v. Nashville, Chattanooga & St. Louis Railway Company.* April 6, 1908. Refund of \$151.16 on shipment of tobacco from Paducah, Ky., to Pensacola, Fla., on account of excessive rate.

961. *Menominee Hydraulic Press Brick Company v. Chicago, Milwaukee & St. Paul Railway Company.* February 5, 1908. Refund of \$4.01 on carload of brick from Mason City, Iowa, to Langford, N. Dak., on account of misrouting by carrier's agent.

968. *West Virginia Pulp & Paper Company v. Baltimore & Ohio Railroad Company.* March 20, 1908. Refund of \$145.13 on 8 carloads of pulp wood from Uniontown, Pa. to Piedmont, W. Va., on account of excessive rate.

969. *M. E. Gray v. Canadian Pacific Railway Company.* February 10, 1908. Refund of \$23.17 on carload of maple logs from Craighurst, Ontario, to Boston, Mass., on account of excessive rate.

970. *Peerless Transit Line v. Pennsylvania Railroad Company.* January 23, 1908. Refund of \$13.26 on carload of oil from Struthers, Pa., to Memphis, Tenn., on account of excessive rate.

972. *Minneapolis Drug Company v. Western Transit Company.* January 30, 1908. Refund of \$24.57 on shipment of Paris green from New York, N. Y., to Minneapolis, Minn., on account of excessive rate.

974. *Marshall-Wells Hardware Company v. Duluth, South Shore & Atlantic Railroad Company.* February 19, 1908. Refund of \$1.66 on shipment of washers from Colerus, Ohio, to Duluth, Minn., on account of excessive rate.

975. *In the matter of relief of agent at Moneta, Wyo., and Big Horn Sheep Company v. Wyoming & Northwestern Railway Company.* January 30, 1908. Refund of \$2 to Big Horn Sheep Company and release of agent at Moneta, Wyo., from collecting undue charge of \$260.77 on 3 carloads of oats from Oakdale, Neligh, and Loretto, Nebr., Moneta, Wyo., on account of excessive rate.

979. *Western Meat Company v. Southern Pacific Company.* April 20, 1908. Refund of \$8,783.80 on 158 carloads of cattle from various points to San Francisco, Cal., on account of oversight in publication of tariffs.

980. *Barrett Manufacturing Company v. Pere Marquette Railroad Company.* February 4, 1908. Refund of \$16.61 on shipment of roofing paper from St. Joseph, Mich., to La Crosse, Wis., on account of excessive rate.

981. *Keith Lumber Company v. Gulf, Colorado & Santa Fe Railway Company.* January 30, 1908. Refund of \$448.35 on 5 carloads of lumber from Funston, Tex., to Llanes, N. Mex., on account of excessive rate.

985. *W. T. Ferguson Lumber Company v. Cape Girardeau & Chester Railroad Company.* January 21, 1908. Refund of \$12.57 on shipment of lumber from Buchanan, Ark., to Perryville, Mo., on account of misrouting by carrier's agent.

986. *Mohawk Mining Company v. Duluth, South Shore & Atlantic Railroad Company.* March 23, 1908. Refund of \$18.30 on shipment of lumber from Buchanan, Ark., to Perryville, Mo., on account of excessive rate.

988. *E. T. Case v. Erie Railroad Company.* April 1, 1908. Refund of \$137.50 on shipment of live stock from Canandaigua, N. Y., to Jersey City, N. J., on account of excessive yardage charges.

989. *Garrett & Company v. Norfolk & Western Railway Company.* February 8, 1908. Refund of \$52.84 on carload of wire from Enfield, N. C., to St. Louis, Mo., on account of inadvertence in publishing tariff.

990. *H. Fisher v. San Pedro, Los Angeles & Salt Lake Railroad Company.* January 29, 1908. Refund of \$74.73 on shipment of scrap iron from Las Vegas, Nev., to Los Angeles, Cal., on account of excessive rate.

992. *W. W. Herron Lumber Company v. Louisville & Nashville Railroad Company.* February 21, 1908. Refund of \$115.03 on carload of lumber from Spotswood, Ala., to Springfield, Mo., on account of misrouting by carrier's agent.

995. *S. H. Bolinger & Company v. St. Louis Southwestern Railway Company.* February 26, 1908. Refund of \$39.72 on shipment of lumber from Bolinger, La., to Hopkins, Minn., on account of misrouting by carrier's agent.

996. *Western Electric Company v. St. Louis Southwestern Railway Company.* February 7, 1908. Refund of \$5.32 on shipment of empty reels returned from Waco, Tex., to Hawthorne, Ill., on account of misrouting by carrier's agent.

998. *Valley Lumber Company v. St. Louis Southwestern Railway Company.* February 13, 1908. Refund of \$32.88 on carload of lumber from Kingsland, Ark., to Dale, Okla., on account of misrouting by carrier's agent.

1000. *S. & J. C. Atlee v. Chicago, Burlington & Quincy Railroad Company.* January 27, 1908. Refund of \$65.74 on 8 carloads of lumber from Fort Madison, Iowa, to St. Louis, Mo., on account of excessive rate.

1004. *H. F. Watson Company v. Lake Shore & Michigan Southern Railway Company.* March 11, 1908. Refund of \$334.90 on 21 carloads of gas tar from Buffalo, N. Y., to Erie, Pa., on account of error in publishing tariff.

1005. *Union Stock Yards & Transit Company v. Michigan Central Railroad Company.* February 13, 1908. Refund of \$63.74 on shipment of manure from Union Stock Yards, Ill., to Paw Paw, Mich., on account of excessive rate.

1009. *G. L. Munroe & Sons v. Grand Trunk Railway Company of Canada.* April 18, 1908. Refund of \$19.14 on shipment of wood ashes from Woodstock, Ontario, to Richmondville, N. Y., on account of misrouting by carrier's agent.

1010. *Seward Trunk & Bag Company v. Norfolk & Western Railway Company.* February 27, 1908. Refund of \$1.47 on shipment of trunk trimmings from Petersburg, Va., to Terryville, Conn., on account of excessive rate.

1013. *Kokomo Steel & Wire Company v. Atchison, Topeka & Santa Fe Railway Company.* January 23, 1908. Refund of \$10.77 on carload of fence wire and nails from Kokomo, Ind., to Galesburg, Ill., on account of error in publishing tariff.

1015. *M. K. Spear v. Central Railroad Company of New Jersey.* February 7, 1908. Refund of \$80.19 on shipment of stone from Conshohocken, Pa., to Elm, N. J., on account of excessive rate.

1016. *A. Klipstein & Company v. Southern Railway Company.* April 1, 1908. Refund of \$13.21 on carload of quebracho extract from New York, N. Y., to Rome, Ga., on account of oversight in publishing rate schedule.

1017. *Joseph Ullman v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* May 11, 1908. Refund of \$26.11 on shipment of green hides from St. Paul, Minn., to White Hall and Grand Haven, Mich., on account of excessive rate.

1019. *Ragley Lumber Company v. Texas & Gulf Railway Company.* February 7, 1908. Refund of \$24.50 on carload of lumber from Ragley, Tex., to Carrier Mills, Ill., on account of misrouting by carrier's agent.

1020. *Ingham Lumber Company v. Texas & Gulf Railway Company.* February 7, 1908. Refund of \$12.81 on carload of lumber from Waterman, Tex., to Platte City Mo., on account of misrouting by carrier's agent.

1022. *C. B. Havens & Company v. Illinois Central Railroad Company.* February 7, 1908. Refund of \$6 on carload of coal from Trenton, Ill., to Council Bluffs, Iowa, on account of excessive rate.

1023. *Singer Manufacturing Company v. Southern Pacific Company.* April 28, 1908. Refund of \$123.51 on 4 shipments of sewing machines from New York, N. Y., to points in Mexico on account of omission in publishing tariff.

1024. *Ten Mile Lumber Company v. Gulf & Ship Island Railroad Company.* January 30, 1908. Refund of \$9.47 on shipment of lumber from Tennile, Miss., to Cincinnati, Ohio, on account of tariff having been declared illegal.

1026. *W. W. Herron Lumber Company v. Gulf & Ship Island Railroad Company.* January 30, 1908. Refund of \$11.20 on shipment of lumber from Tennile, Miss., to Butler, Pa., on account of tariff having been declared illegal.

1027. *Eastman Gardiner & Company v. Gulf & Ship Island Railroad Company.* January 30, 1908. Refund of \$55.74 on shipments of lumber from Laurel, Miss., to Louisville, Ky., and St. Louis, Mo., on account of tariff having been declared illegal.

1028. *Finkbine Lumber Company v. Gulf & Ship Island Railroad Company.* January 30, 1908. Refund of \$9.20 on shipment of lumber from Wiggins, Miss., to Cincinnati, Ohio, on account of tariff having been declared illegal.

1029. *Chicago Lumber & Coal Company v. Gulf & Ship Island Railroad Company.* January 30, 1908. Refund of \$8.66 on shipment of lumber from Lumberton, Miss., to Louisville, Ky., on account of tariff having been declared illegal.

1030. *Gress Manufacturing Company v. Gulf & Ship Island Railroad Company.* January 30, 1908. Refund of \$24.08 on shipments of lumber from Brooklyn and Rosine Miss., to St. Louis, Mo., on account of tariff having been declared illegal.

1031. *Chicago Lumber & Coal Company v. Gulf & Ship Island Railroad Company.* January 30, 1908. Refund of \$6 on shipments of lumber from Kola, Miss., to Cincinnati, Ohio, on account of tariff having been declared illegal.

1032. *Kreger & Bradley Lumber Company v. Norfolk & Western Railway Company.* February 13, 1908. Refund of \$7.90 on 2 carloads of lumber from Meadow View, Va., to Easton, Md., on account of excessive rate.

1033. *F. P. Bath & Company v. Missouri, Kansas & Texas Railway Company.* February 21, 1908. Refund of \$352.24 on shipments of cotton compressed at Oklahoma City, Okla., on account of excessive rate.

1034. *Gulf Refining Company v. Morgan's Louisiana & Texas Railroad & Steamship Company.* February 13, 1908. Refund of \$639.39 on 21 carloads of petroleum from West Port Arthur, Tex., to New Orleans, La., on account of error in publishing tariff.

1035. *Reid, Murdoch & Company v. Atchison, Topeka & Santa Fe Railway Company.* February 25, 1908. Refund of \$184.74 on carload of rice from Markham, Tex., to Chicago, Ill., on account of excessive rate.

1036. *Ingham Lumber Company v. Texas & Gulf Railway Company.* February 10, 1908. Refund of \$17.57 on carload of lumber from Timpeon, Tex., to Sioux City, Iowa, on account of misrouting by carrier's agent.

1043. *W. B. Johnson v. Chicago, Rock Island & Gulf Railway Company.* March 4, 1908. Refund of \$237.79 on shipments of grain from Hooker, Okla., to Dallas, Tex., on account of excessive rate.

1045. *Williams & Rehling v. Old Dominion Steamship Company.* February 5, 1908. Refund of \$4.90 on shipment of tobacco stems from Richmond, Va., to New Brunswick, N. J., on account of excessive rate.

1046. *Chicago Lumber & Coal Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* February 12, 1908. Refund of \$7.90 on shipment of lumber from Bibon, Wis., to East Moline, Ill., on account of misrouting by carrier's agent.

1047. *Agent at St. Joseph, Mo., of Chicago, Burlington & Quincy Railroad Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* February 11, 1908. Refund of \$36 on shipment of grain from Duluth, Minn., to St. Joseph, Mo., on account of misrouting by carrier's agent.

1048. *H. J. Hollister v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* March 4, 1908. Refund of \$32 on shipment of feed from Le Mars, Iowa, to Marquette, Mich., on account of misrouting by carrier's agent.

1049. *Lee Chamberlain & Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* February 3, 1908. Refund of \$88.10 on carload of coke from Salt Lake City, Utah, to Pasadena, Cal., on account of excessive rate.

1051. *W. P. Fuller & Company v. Atchison, Topeka & Santa Fe Railway Company.* May 15, 1908. Refund of \$17.32 on carload of linseed oil from Chicago, Ill., to Los Angeles, Cal., on account of excessive rate.

1053. *Laning-Harris Coal & Grain Company v. Missouri Kansas & Texas Railway Company.* March 4, 1908. Refund of \$44.30 on carload of corn and bran from Kansas City, Mo., to Maria, Tex., on account of excessive rate.

1054. *Swift & Company v. Missouri, Kansas & Texas Railway Company.* February 25, 1908. Refund of \$93.97 on carload of fresh meat from Fort Worth, Tex., to Minneapolis, Minn., on account of excessive rate.

1057. *Boire & Grogan Lumber Company v. Baltimore & Ohio Southwestern Railroad Company.* February 8, 1908. Refund of \$15.84 on shipment of lumber from Greenfield, Ohio, to Philadelphia, Pa., on account of misrouting by carrier's agent.

1060. *Acme Cement Plaster Company v. Chicago, Burlington & Quincy Railroad Company.* February 3, 1908. Refund of \$105 on 2 carloads of cement plaster from Laramie, Wyo., to Basin, Wyo., on account of excessive rate.

1061. *Donovan-McCormick Company v. Chicago, Burlington & Quincy Railroad Company.* April 30, 1908. Refund of \$151.80 on 2 carloads of agricultural implements from Moline, Ill., to Billings, Mont., on account of error in publication of rates.

1063. *Sherman Cotton Oil Provision Company v. Houston & Texas Central Railroad Company.* February 13, 1908. Refund of \$85.98 on shipment of lard substitute from Sherman, Tex., to Jeanerette, La., on account of excessive rate.

1064. *Zeigler District Colliery Company v. Chicago, Burlington & Quincy Railroad Company.* February 7, 1908. Refund of \$6.66 on carload of coal from Christopher, Ill., to Clinton, Iowa, on account of excessive rate.

1069. *Record Commercial Company v. Oregon Short Line Railroad Company.* January 24, 1908. Refund of \$109.35 on shipment of coal from North Kemmerer, Wyo., to Weiser, Idaho, on account of error in publishing tariff.

1070. *Pacific Curled Hair Company v. Atchison, Topeka & Santa Fe Railway Company.* March 23, 1908. Refund of \$57.52 on shipment of plasterer's hair from Denver Colo., to San Francisco, Cal., on account of excessive rate.

1071. *North Shore Abrasive Company v. Chicago Great Western Railway Company.* February 10, 1908. Refund of \$10 on shipment of sand from Duluth, Minn., to St. Louis, Mo., on account of excessive rate.

1072. *W. S. Knight & Company v. Missouri, Kansas & Texas Railway Company.* March 20, 1908. Refund of \$147 on shipment of rice from Katy, Tex., to Chicago, Ill., on account of excessive rate.

1081. *Hugo F. Loebl v. Southern Pacific Company.* February 13, 1908. Refund of \$37.05 on shipment of hops from Silverton, Oreg., to New York, N. Y., on account of misrouting by carrier's agent.

1085. *C. C. Prouty & Company v. Minneapolis & St. Louis Railroad Company.* February 18, 1908. Refund of \$3 on carload of sugar from Chaska, Minn., to Des Moines, Iowa, on account of car not being equipped with airbrakes and road refusing to handle same, making drayage necessary.

1087. *Albert Preston v. Richmond, Fredericksburg & Potomac Railroad Company.* April 11, 1908. Refund of \$527.72 on shipments of ties from points on line to Baltimore, Md., on account of excessive rate.

1089. *Lewis & Molesworth v. Pecos & Northern Texas Railway Company.* February 14, 1908. Refund of \$42.35 on carload of cotton seed from Texola, Okla., to Canyon City, Tex., on account of excessive rate.

1091. *Mrs. Ella St. Clair v. Chicago, Burlington & Quincy Railroad Company.* February 5, 1908. Refund of \$85.40 on shipment of emigrant movables from Rockport, Mo., to Caldwell, Idaho, on account of shipper being deserving of charity to extent of having emigrant movable rate applied to shipment.

1092. *Colorado Fuel & Iron Company v. Chicago, Burlington & Quincy Railroad Company.* February 13, 1908. Refund of \$101.56 on carload of scrap iron from Englewood, S. Dak., to Minnequa, Colo., on account of excessive rate.

1093. *C. B. Coles & Sons Company v. Pennsylvania Railroad Company.* February 14, 1908. Refund of \$12.75 on shipment of window glass from Monongahela, Pa., to Camden, N. J., on account of misrouting by carrier's agent.

1095. *American Lumber & Manufacturing Company v. Grand Rapids & Indiana Railway Company.* February 27, 1908. Refund of \$6.80 on carload of lumber from Big Rapids, Mich., to Mansfield, Ohio, on account of misrouting by carrier's agent.

1097. *Geomann Grain Company v. Grand Trunk Railway Company of Canada.* February 10, 1908. Refund of \$21.70 on carload of rye from Lapeer, Mich., to Fair Oaks, Pa., on account of misrouting by carrier's agent.

1100. *John A. Edwards v. Atchison, Topeka & Santa Fe Railway Company.* February 11, 1908. Refund of \$228.44 on 2 carloads of cotton seed from Gage, Okla., to Englewood and Ashland, Kans., on account of excessive rate.

1101. *Henneberry & Company v. Atchison, Topeka & Santa Fe Railway Company.* March 4, 1908. Refund of \$32.44 on carload of grease and fertilizer from Arkansas City, Kans., to Kansas City, Mo., on account of excessive rate.

1102. *Fosston Manufacturing Company v. Northern Pacific Railway Company.* February 21, 1908. Refund of \$13.50 on carload of fanning mills from Minnesota Transfer, Minn., to Winnipeg, Manitoba, on account of excessive rate.

1103. *F. J. Love v. Oregon Railroad & Navigation Company.* February 20, 1908. Refund of \$79.80 on carload of furnaces from Marshalltown, Iowa, to Spokane, Wash., on account of excessive rate.

1105. *A. F. Ford & Company v. Southern Pacific Company.* April 17, 1908. Refund of \$55.86 on carload of hay from Lovelock, Nev., to Auburn, Cal., on account of oversight in publishing tariff.

1108. *Washington Cotton Oil Company v. Morgan's Louisiana & Texas Railroad & Steamship Company.* March 2, 1908. Refund of \$661.26 on shipment of cotton-seed cake from Washington, La., to Galveston, Tex., for export on account of excessive rate.

1109. *Hargra Hala Mining Company v. Atchison, Topeka & Santa Fe Railway Company.* February 8, 1908. Refund of \$822.72 on shipment of fuel oil from Erie, Kans. to Salome, Ariz., on account of excessive rate.

1114. *Tyson & Jones Buggy Company v. Southern Railway Company.* February 15, 1908. Refund of \$2.64 on shipment of 3 buggies from Carthage, N. C., to Abbeville, S. C., on account of excessive rate.

1116. *Campbell & Cleaver Cotton Company v. Missouri, Kansas & Texas Railway Company.* March 16, 1908. Refund of \$220.46 on shipments of cotton at Oklahoma City, Okla., on account of excessive rate.

1118. *Ingham Lumber Company v. Atchison, Topeka & Santa Fe Railway Company.* February 14, 1908. Refund of \$22.09 on shipments of lumber from Bivins, Tex., to Oakley, Kans., on account of misrouting by carrier's agent.

1119. *Interstate Sand Company v. Cincinnati & Muskingum Valley Railroad Company.* February 17, 1908. Refund of \$47.56 on 2 carloads of sand from Ellis, Ohio, to Beaver Falls, Pa., on account of oversight in publishing tariff.

1121. *Golconda Mercantile & Banking Company v. Southern Pacific Company.* May 15, 1908. Refund of \$45.45 on carload of lumber from Truckee, Cal., to Golconda, Nev., on account of excessive rate.

1125. *A. Brounstein & Company v. Southern Pacific Company.* February 17, 1908. Refund of \$35.75 on carload of hides from San Carlos, Ariz., to Los Angeles, Cal., on account of excessive rate.

1129. *A. Brounstein & Company v. Southern Pacific Company.* February 17, 1908. Refund of \$55.72 on shipment of hides from Tucson, Ariz., to Los Angeles, Cal., on account of excessive rate.

1130. *A. Brounstein & Company v. Southern Pacific Company.* March 4, 1908. Refund of \$203.50 on shipment of hides from Globe, Ariz., to Los Angeles, Cal., on account of excessive rate.

1132. *Oklahoma Furniture Manufacturing Company v. Missouri, Kansas & Texas Railway Company.* March 2, 1908. Refund of \$16.57 on shipment of cottonwood slabs from Maud, Okla., to Oklahoma City, Okla., on account of excessive rate.

1135. *Weeter Lumber Company v. Oregon Short Line Railroad Company.* February 7, 1908. Refund of \$10.20 on carload of coal from Kemmerer, Wyo., to Shelley, Idaho on account of excessive rate.

1136. *R. P. Baer & Company v. Southern Railway Company.* March 5, 1908. Refund of \$13.84 on carload of lumber from Whittier, N. C., to New York, N. Y., on account of misrouting by carrier's agent.

1138. *D. G. Cutler Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* February 17, 1908. Refund of \$2.38 on carload of lime from Marblehead, Ohio, to Minneapolis, Minn., on account of excessive rate.

1141. *E. Yoakum v. Santa Fe Central Railway Company.* February 13, 1908. Refund of \$6.90 on round-trip fare from Madison, Kans., to Estancia, N. Mex., on account of error by agent in drawing exchange order for ticket.

1142. *Mrs. E. Ballou v. Santa Fe Central Railway Company.* February 13, 1908. Refund of \$6.20 on round-trip fare from point in Kansas to Moriarty, N. Mex., on account of error by agent in drawing exchange order for ticket.

1143. *J. E. Bryan v. Oregon Railroad & Navigation Company.* February 11, 1908. Refund of \$11.95 on shipment of household goods from Baker City, Oreg., to Seattle Wash., on account of misrouting by carrier's agent.

1145. *The Horton Company v. Southern Pacific Company.* March 9, 1908. Refund of \$57.30 on carload of lumber from Loyalton, Cal., to Battle Mountain, Nev., on account of excessive rate.

1146. *In the matter of relief of agent at Amarillo, Tex., of Chicago, Rock Island & Gulf Railway Company.* February 13, 1908. Refund of \$821.78 on 3 carloads of steel rails from Bessemer, Pa., to Amarillo, Tex., on account of excessive rate.

1152. *Armour & Company v. Chicago, Burlington & Quincy Railroad Company.* February 25, 1908. Refund of \$545.30 on shipments of fresh meat, etc., from South Omaha, Nebr., to Pueblo and Denver, Colo., on account of error in publishing tariff.

1153. *Amalgamated Sugar Company v. Oregon Short Line Railroad Company.* May 8, 1908. Refund of \$3,148.97 on shipments of beets from points in Idaho to Logan, Utah, on account of excessive rate.

1154. *Fairbanks, Morse & Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* February 28, 1908. Refund of \$152.47 on shipment of rails, etc., from Cumberland, Md., to Los Angeles, Cal., on account of excessive rate.

1155. *A. Bushnell v. Vicksburg, Shreveport & Pacific Railway Company.* March 17, 1908. Refund of \$7.57 on carload of lumber from Benoit Siding, La., to Millersville, Ohio, on account of misrouting by carrier's agent.

1156. *Hartman Furniture & Carpet Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.* March 26, 1908. Refund of \$51.78 on shipments of furniture from Shelbyville, Ind., to Chicago, Ill., on account of excessive rate.

1158. *H. P. Townsend v. New York, New Haven & Hartford Railroad Company.* February 26, 1908. Refund of \$1.25 on fare from Hartford, Conn., to New York, N. Y., and return on account of error in publishing tariff.

1159. *Austin & Company v. Chicago, Burlington & Quincy Railroad Company.* February 20, 1908. Refund of \$30.35 on 3 carloads of wheat from Orleans and Carter, Nebr., to Kansas City, Mo., on account of excessive rate.

1160. *E. E. Neff Company v. Galveston, Harrisburg & San Antonio Railway Company.* February 21, 1908. Refund of \$556.40 on carload of cement from Galveston, Tex., to Globe, Ariz., on account of excessive rate.

1161. *Wilson T. Howe v. New York Central & Hudson River Railroad Company.* February 17, 1908. Refund of \$0.92 on fare from Cleveland, Ohio, to Ridgway, Pa., on account of error in publishing tariff.

1163. *Lunger Furniture Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* February 27, 1908. Refund of \$0.75 on shipment of lumber from Spring Valley, Wis., to North St. Paul, Minn., on account of misrouting by carrier's agent.

1164. *Western Union Telegraph Company v. Illinois Central Railroad Company.* April 1, 1908. Refund of \$15 on carload of stationery from Chicago, Ill., to Butte, Mont., on account of misrouting by carrier's agent.

1166. *Mathieson Alkali Works v. Norfolk & Western Railway Company.* February 29, 1908. Refund of \$51.01 on carload of soda ash from Saltville, Va., to Huntingdon Valley Station, Pa., on account of excessive rate.

1167. *Gay & Gay v. Gulf, Colorado & Santa Fe Railway Company.* May 14, 1908. Refund of \$85.40 on carload of cotton seed from Pauls Valley, Okla., to Montgomery, Tex., on account of oversight in publishing tariff.

1174. *Sunderland Brothers Company v. Chicago, Burlington & Quincy Railroad Company.* March 27, 1908. Refund of \$38 on 2 carloads of cement from Iola, Kans., to Walthill, Nebr., on account of excessive rate.

1175. *New Prague Flouring Mill Company v. Anchor Line.* February 21, 1908. Refund of \$1.17 on carload of flour from New Prague, Minn., to Frederick, Md., on account of excessive weight charged.

1176. *New Prague Flouring Mill Company v. Anchor Line.* February 21, 1908. Refund of \$1.07 on carload of flour from New Prague, Minn., to Wilkes-Barre, Pa., on account of excessive weight charged.

1177. *New Prague Flouring Mill Company v. Anchor Line.* February 21, 1908. Refund of \$0.58 on carload of flour from New Prague, Minn., to Barnesboro, Pa., on account of excessive weight charged.

1178. *New Prague Flouring Mill Company v. Anchor Line.* February 21, 1908. Refund of \$0.47 on carload of flour from New Prague, Minn., to Cresson, Pa., on account of excessive estimated weight.

1179. *New Prague Flouring Mill Company v. Anchor Line.* February 21, 1908. Refund of \$1.07 on carload of flour from New Prague, Minn., to Wilkes-Barre, Pa., on account of excessive estimated weight.

1180. *New Prague Flouring Mill Company v. Anchor Line.* February 21, 1908. Refund of \$0.58 on carload of flour from New Prague, Minn., to Nanty Glo, Pa., on account of excessive estimated weight.

1181. *New Prague Flouring Mill Company v. Anchor Line.* February 21, 1908. Refund of \$1.18 on carload of flour from New Prague, Minn., to Jamaica, N. Y., on account of excessive estimated weight.

1182. *Listman Milling Company v. Anchor Line.* February 21, 1908. Refund of \$1.04 on carload of flour from La Crosse, Wis., to Bridgeport, Pa., on account of excessive estimated weight.

1183. *Listman Milling Company v. Anchor Line.* February 21, 1908. Refund of \$1.04 on carload of flour from La Crosse, Wis., to Annville, Pa., on account of excessive estimated weight.

1184. *Listman Milling Company v. Anchor Line.* February 21, 1908. Refund of \$0.96 on carload of flour from La Crosse, Wis., to Bridgeport, Pa., on account of excessive estimated weight.

1185. *Listman Milling Company v. Anchor Line.* February 21, 1908. Refund of \$0.96 on carload of flour from La Crosse, Wis., to York, Pa., on account of excessive estimated weight.

1186. *Listman Milling Company v. Anchor Line.* February 21, 1908. Refund of \$1.04 on carload of flour from La Crosse, Wis., to Meriden, Conn., on account of excessive estimated weight.

1187. *Listman Milling Company v. Anchor Line.* February 21, 1908. Refund of \$0.96 on carload of flour from La Crosse, Wis., to York, Pa., on account of excessive estimated weight.

1188. *Sleepy Eye Milling Company v. Anchor Line.* February 21, 1908. Refund of \$0.49 on carload of flour from Sleepy Eye, Minn., to Baltimore, Md., on account of excessive estimated weight.

1189. *Sleepy Eye Milling Company v. Anchor Line.* February 21, 1908. Refund of \$0.82 on carload of flour from Sleepy Eye, Minn., to Baltimore Md., on account of excessive estimated weight.

1190. *Sleepy Eye Milling Company v. Anchor Line.* February 21, 1908. Refund of \$0.96 on carload of flour from Sleepy Eye, Minn., to Lewiston, Pa., on account of excessive estimated weight.

1191. *Sleepy Eye Milling Company v. Anchor Line.* February 21, 1908. Refund of \$1.04 on carload of flour from Sleepy Eye, Minn., to Lebanon, Pa., on account of excessive estimated weight.

1192. *L. Christian & Company v. Anchor Line.* February 21, 1908. Refund of \$0.47 on carload of flour from Shakopee, Minn., to Hastings, Pa., on account of excessive estimated weight.

1193. *L. Christian & Company v. Anchor Line.* February 21, 1908. Refund of \$1.06 on carload of flour from Shakopee, Minn., to Reading, Pa., on account of excessive estimated weight.

1194. *L. Christian & Company v. Anchor Line.* February 21, 1908. Refund of \$0.40 on carload of flour from Shakopee, Minn., to Nanticoke, Pa., on account of excessive estimated weight.

1195. *L. Christian & Company v. Anchor Line.* February 21, 1908. Refund of \$0.66 on carload of flour from Shakopee, Minn., to Nanticoke, Pa., on account of excessive estimated weight.

1196. *Wylie, Son & Company v. Anchor Line.* February 21, 1908. Refund of \$0.98 on carload of flour from Milwaukee, Wis., to Baltimore, Md., on account of excessive estimated weight.

1197. *Wylie, Son & Company v. Anchor Line.* February 21, 1908. Refund of \$0.98 on carload of flour from Milwaukee, Wis., to Baltimore, Md., on account of excessive estimated weight.

1198. *Hubbard Milling Company v. Anchor Line.* February 21, 1908. Refund of \$1.78 on carload of flour from Mankato, Minn., to Charleston, S. C., on account of excessive estimated weight.

1199. *Fergus Flour Mills Company v. Anchor Line.* February 21, 1908. Refund of \$1.50 on carload of flour from Fergus Falls, Minn., to Baltimore, Md., on account of excessive estimated weight.

1200. *George Tilston Milling Company v. Anchor Line.* February 21, 1908. Refund of \$1.31 on carload of flour from St. Cloud, Minn., to Wilkes-Barre, Pa., on account of excessive estimated weight.

1201. *Blank & Gotshall v. Anchor Line.* February 21, 1908. Refund of \$0.28 on carload of flour from Faribault, Minn., to Sunbury, Pa., on account of excessive estimated weight.

1202. *Paxton Flour & Feed Company v. Anchor Line.* February 21, 1908. Refund of \$0.98 on carload of flour from New Prague, Minn., to Harrisburg, Pa., on account of excessive estimated weight.

1203. *Paxton Flour & Feed Company v. Anchor Line.* February 21, 1908. Refund of \$0.96 on carload of flour from New Ulm, Minn., to Harrisburg, Pa., on account of excessive estimated weight.

1204. *D. M. Baldwin, jr., v. Anchor Line.* February 21, 1908. Refund of \$0.79 on carload of flour from Graceville, Minn., to Mont Clare, Pa., on account of excessive estimated weight.

1207. *Jefferson Cooperage Company v. Norfolk & Western Railway Company.* March 3, 1908. Refund of \$10.95 on carload of staves and heading from Charlestown, W. Va., to Kemps Station, Md., on account of excessive rate.

1216. *Rogers, Brown & Company v. Southern Railway Company.* March 25, 1908. Refund of \$12.50 on carload of pig iron from East Birmingham, Ala., to Oronogo, Mo., on account of excessive rate.

1218. *Loftus-Hubbard Elevator Company v. Northern Pacific Railway Company.* March 6, 1908. Refund of \$298.50 on 2 carloads of oats from Brinsmade, N. Dak., and Starbuck, Minn., to Billings, Mont., on account of excessive rate.

1219. *E. Sondheimer & Company v. Missouri Pacific Railway Company.* February 28, 1908. Refund of \$18.08 on carload of lumber from Lansing, Ark., to Union City, Iowa, on account of misrouting by carrier's agent.

1220. *Cannon Box Company v. Missouri Pacific Railway Company.* March 10, 1908. Refund of \$29.05 on carload of lumber from Whelan, Mo., to Cairo, Ill., on account of misrouting by carrier's agent.

1221. *G. W. Miles Timber & Lumber Company v. Missouri Pacific Railway Company.* April 23, 1908. Refund of \$36.80 on carload of lumber from Smackover, Ark., to Decatur, Ark., on account of misrouting by carrier's agent.

1227. *Beekman Lumber Company v. New Orleans & Northwestern Railroad Company.* April 21, 1908. Refund of \$90.60 on carload of lumber from Stevenson, La., to Liberal, Kans., on account of misrouting by carrier's agent.

1228. *F. S. Hendrickson Lumber Company v. Missouri Pacific Railway Company.* February 28, 1908. Refund of \$8.70 on carload of lumber from Vian, Okla., to Chicago, Ill., on account of misrouting by carrier's agent.

1229. *Updike Grain Company v. Missouri Pacific Railway Company.* February 28, 1908. Refund of \$146.67 on shipment of corn from Mount Clare, Nebr., to South Omaha, Nebr., on account of excessive rate.

1232. *F. S. Hendrickson Lumber Company v. Missouri Pacific Railway Company.* March 6, 1908. Refund of \$2.14 on carload of lumber from Vian, Okla., to Clinton, Iowa, on account of misrouting by carrier's agent.

1236. *S. E. Comstock & Company v. Pennsylvania Railroad Company.* March 4, 1908. Refund of \$9 on carload of vegetables from Marion, N. Y., to Milwaukee, Wis., on account of excessive rate.

1242. *Bay State Milling Company v. Empire Line.* May 26, 1908. Refund of \$4 on shipment of flour from Winona, Minn., to Steelton, Pa., on account of excessive rate.

1243. *United States Leather Company v. Louisville & Nashville Railroad Company.* April 6, 1908. Refund of \$2,988.51 on shipment of leather from Middlesboro, Ky., to Cincinnati, Ohio, on account of error in publishing tariff.

1246. *W. P. Brown & Company v. Illinois Central Railroad Company.* April 21, 1908. Refund of \$3.26 on carload of oats from Bondville, Ill., to Memphis, Tenn., on account of excessive rate.

1247. *Miles & Ricketts v. Illinois Central Railroad Company.* March 23, 1908. Refund of \$5.19 on carload of oats from Fischer, Ill., to Memphis, Tenn., on account of excessive rate.

1249. *William Cameron v. Texas & New Orleans Railroad Company.* April 2, 1908. Refund of \$21.57 on 2 carloads of lumber from Rockland, Tex., to Stoughton, Wis., on account of misrouting by carrier's agent.

1250. *Punxsutawney Drilling & Contracting Company v. American Express Company.* March 18, 1908. Refund of \$13.80 on shipment of castings from Punxsutawney, Pa., to Clay, Ky., on account of excessive rate.

1259. *Levis Hubbard & Company v. Norfolk & Western Railway Company.* March 16, 1908. Refund of \$64.20 on carload of canned goods from Werts, Va., to Fayette W. Va., on account of excessive rate.

1261. *Moomaw-Horton Company v. Norfolk & Western Railway Company.* March 16, 1908. Refund of \$54.60 on 2 carloads of canned goods from Boones Mill, Va., to Greenville, S. C., on account of excessive rate.

1263. *Sam Finney v. Grand Trunk Railway Company of Canada.* March 16, 1908. Refund of \$5 on carload of corn from Chicago, Ill., to Thorndale, Ontario, on account of error in compiling switching tariff.

1268. *F. D. Matthews v. Texas & Pacific Railway Company.* April 29, 1908. Refund of \$215.95 on shipments of cotton seed hulls from Colorado and Merkel, Tex. to New Orleans, La., on account of excessive rate.

1270. *Dorris-Heyman Furniture Company v. Santa Fe, Prescott & Phoenix Railway Company.* March 7, 1908. Refund of \$110.88 on shipment of furniture from Chicago, Ill., to Phoenix, Ariz., on account of excessive minimum carload weight.

1271. *Colorado Canning Company v. Denver & Rio Grande Railroad Company.* April 18, 1908. Refund of \$104.25 on shipments of strawberries from Provo, Utah, to Canon City, Colo., on account of excessive rate.

1272. *A. D. Lemaire & Sons v. Southern Pacific Company.* March 5, 1908. Refund of \$103.60 on 2 carloads of lumber from Truckee, Cal., to Battle Mountain, Nev., on account of excessive rate.

1281. *P. R. Eaton v. Boston & Albany Railroad Company.* April 21, 1908. Refund of \$16.07 on shipment of lumber from Island Falls, Me., to Westboro, Mass., on account of excessive rate.

1282. *P. R. Eaton v. Boston & Albany Railroad Company.* March 11, 1908. Refund of \$7.90 on shipment of lumber from Houlton, Me., to Spencer, Mass., on account of excessive rate.

1283. *P. R. Eaton v. Boston & Albany Railroad Company.* April 13, 1908. Refund of \$49.59 on shipment of lumber from South Sebec, Me., to Spencer, Mass., on account of excessive rate.

1284. *North Carolina Cotton Oil Company v. Seaboard Air Line Railway.* April 2, 1908. Refund of \$12 on carload of cotton-seed meal from Henderson, N. C., to Roanoke, Va., on account of excessive rate.

1289. *W. W. Herron Lumber Company v. Gulf & Ship Island Railroad Company.* April 13, 1908. Refund of \$12.60 on shipment of lumber from Tenmile, Miss., to Newcastle, Pa., on account of excessive rate, tariff having been declared illegal by Commission.

1290. *Thorn Cement Company v. Lehigh Valley Railroad Company.* April 14, 1908. Refund of \$37.62 on 3 shipments of cement from Copley, Pa., to Black Rock and Lancaster, N. Y., on account of error in publishing tariff.

1291. *Dempster Mill Manufacturing Company v. Chicago, Burlington & Quincy Railroad Company.* April 11, 1908. Refund of \$45.03 on shipment of spelter from Chanute, Kans., to Beatrice, Nebr., on account of excessive rate.

1293. *American Tobacco Company v. Durham & Southern Railway Company.* April 27, 1908. Refund of \$15.32 on shipments of tobacco from Durham, N. C., to St. Louis, Mo., on account of excessive rate.

1294. *C. H. Worcester Company v. Wisconsin & Michigan Railway Company.* April 20, 1908. Refund of \$3.20 on carload of poles from McAllister, Wis., to Roanoke, Ill. on account of excessive rate.

1295. *Anti-Trust Oil Company v. Colorado & Southern Railway Company.* March 14, 1908. Refund of \$146.26 on tank car of oil from Niotaze, Kans., to Denver, Colo. on account of excessive minimum carload weight.

1296. *S. Flory Manufacturing Company v. Bangor & Portland Railway Company.* March 23, 1908. Refund of \$33.60 on carload of machinery from Bangor, Pa., to Fore City, Ark., on account of misrouting by carrier's agent.

1299. *Kola Lumber Company v. Gulf & Ship Island Railroad Company.* March 1, 1908. Refund of \$9.04 on shipment of lumber from Kola, Miss., to St. Louis, Mo., on account of tariff having been declared illegal by Commission.

1300. *Kola Lumber Company v. Gulf & Ship Island Railroad Company.* March 1, 1908. Refund of \$11.82 on shipment of lumber from Kola, Miss., to Chicago, Ill. on account of tariff having been declared illegal by Commission.

1302. *American Car & Foundry Company v. Gulf & Ship Island Railroad Company.* March 12, 1908. Refund of \$11.11 on shipment of lumber from Epps, Mich., to West Detroit, Mich., on account of tariff having been declared illegal by Commission.

1303. *Hughes Moore v. Gulf & Ship Island Railroad Company.* April 2, 1908. Refund of \$6.40 on shipment of lumber from Perkinson, Miss., to Louisville, Ky., on account of excessive rate.

1306. *Franklin Boiler Works v. Delaware & Hudson Company.* May 11, 1908. Refund of \$18.48 on shipment of boiler fittings from Troy, N. Y., to Cape May, N. J., on account of excessive rate.

1313. *Duluth Log Company v. Northern Pacific Railway Company.* March 16, 1908. Refund of \$3 on shipment of shingles from Aitkin, Minn., to Superior, Wis., on account of excessive rate.

1324. *G. H. Deeves Lumber Company v. Chicago & Northwestern Railway Company.* April 14, 1908. Refund of \$3.50 on carload of lumber from Cloquet, Minn., to Chicago, Ill., on account of oversight in publishing tariff.

1330. *Colorado Fuel & Iron Company v. Chicago, Burlington & Quincy Railroad Company.* March 16, 1908. Refund of \$116.11 on 2 carloads of cast-iron pipe from Minnequa, Colo., to Clearmont, Wyo., on account of excessive rate.

1332. *Bassett Grain Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.* March 20, 1908. Refund of \$50.68 on 4 carloads of corn from Elizabethtown, Ind., to Cincinnati, Ohio, on account of excessive rate.

1353. *H. C. Killingsworth v. Missouri, Kansas & Texas Railway of Texas.* March 5, 1908. Refund of \$55.04 on 2 shipments of snapped corn from Haskell, Okla., to Greenville, Tex., on account of excessive rate.

1358. *C. B. Havens & Company v. Iowa Central Railway Company.* March 23, 1908. Refund of \$7.98 on shipment of coke from Peoria, Ill., to Ames, Nebr., on account of misrouting by carrier's agent.

1359. *C. B. Havens & Company v. Iowa Central Railway Company.* March 23, 1908. Refund of \$7.12 on carload of coke from Peoria, Ill., to Ames, Nebr., on account of misrouting by carrier's agent.

1360. *C. B. Havens & Company v. Iowa Central Railway Company.* March 23, 1908. Refund of \$5.13 on carload of coke from Peoria, Ill., to Ames, Nebr., on account of misrouting by carrier's agent.

1361. *C. B. Havens & Company v. Iowa Central Railway Company.* March 23, 1908. Refund of \$7.88 on carload of coke from Peoria, Ill., to Ames, Nebr., on account of misrouting by carrier's agent.

1364. *Miner, Read & Garrette v. New York, New Haven & Hartford Railroad Company.* April 28, 1908. Refund of \$95.37 on shipments of sugar from New York, N. Y., to Meriden, Conn., on account of excessive rate.

1365. *D. Eddy & Sons Company v. New York, New Haven & Hartford Railroad Company.* March 17, 1908. Refund of \$46.10 on shipment of refrigerators from Boston, Mass., to New York, N. Y., on account of excessive rate.

1369. *Union Sulphur Company v. Baltimore & Ohio Railroad Company.* March 20, 1908. Refund of \$100.80 on shipment of sulphur from Philadelphia, Pa., to Steubenville, Ohio, on account of excessive rate.

1371. *Ogburn-Dalchau Lumber Company v. Gulf, Colorado & Santa Fe Railway Company.* March 20, 1908. Refund of \$49.41 on carload of lumber from Galloway, La., to Trent, Tex., on account of excessive rate.

1373. *Perry & Whitney Company v. Boston & Albany Railroad Company.* May 1, 1908. Refund of \$9.60 on shipment of lumber from Eagle Lake, Me., to Spencer, Mass., on account of excessive rate.

1379. *J. A. Budlong & Son Company v. New York, New Haven & Hartford Railroad Company.* May 6, 1908. Refund of \$317.90 on 4 carloads of manure from Boylston street, Boston, Mass., to Cranston, R. I., on account of excessive rate.

1381. *Kemp Lumber Company v. Pecos Valley & Northeastern Railway Company.* March 23, 1908. Refund of \$65.41 on 5 carloads of lumber from Albuquerque, N. Mex., to points in Pecos Valley on account of excessive rate.

1382. *Lincoln Paint & Color Company v. Chicago, Burlington & Quincy Railroad Company.* March 23, 1908. Refund of \$42.75 on carload of paint from Lincoln, Nebr., to Wichita, Kans., on account of excessive rate.

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1383. *Kemp Lumber Company v. Pecos Valley & Northeastern Railway Company*. March 23, 1908. Refund of \$111.29 on 2 carloads of lumber from Albuquerque, N. Mex., to Artesia, N. Mex., on account of excessive rate.

1384. *Kemp Lumber Company v. Pecos Valley & Northeastern Railway Company*. March 23, 1908. Refund of \$126.12 on 2 carloads of lumber from Albuquerque, N. Mex., to Hagerman, N. Mex., on account of excessive rate.

1386. *United States Bottlers' Supply Company v. Michigan Central Railroad Company*. March 23, 1908. Refund of \$11.28 on carload of bottles from West Tolet, Ohio, to St. Paul, Minn., on account of excessive rate.

1388. *Mente & Company v. Morgan's Louisiana & Texas Railroad & Steamship Company*. April 18, 1908. Refund of \$466.08 on 13 shipments of jute bags from New Orleans, La., to Galveston, Tex., on account of excessive rate.

1391. *J. G. White & Company v. Southern Pacific Company*. May 5, 1908. Refund of \$446.20 on shipment of crude oil from Chino, Cal., to Yuma, Ariz., on account of excessive rate.

1392. *H. Snyder & Sons v. Norfolk & Western Railway Company*. March 23, 1908. Refund of \$54 on shipment of live poultry, pigs, and horse from Rural Retreat, Va. to Scranton, Pa., on account of excessive rate.

1396. *Thompson & Tucker Lumber Company v. Texas & New Orleans Railroad Company*. May 11, 1908. Refund of \$4.54 on carload of lumber from Doucette, Tex. to Jeffersonville, Ind., on account of misrouting by carrier's agent.

1401. *Wasner Fruit Company v. Chicago, Burlington & Quincy Railroad Company*. May 22, 1908. Refund of \$43.20 on carload of melons from Oquawka, Ill., to De Witt, S. Dak., on account of excessive rate.

1404. *Sligo Iron Store Company v. Illinois Central Railroad Company*. April 30, 1908. Refund of \$27.55 on carload of coal from Quinnimont, W. Va., to West Salem, Ill., on account of excessive rate.

1406. *Anti-Trust Oil Company v. Colorado & Southern Railway Company*. April 21, 1908. Refund of \$144 on carload of oil from Niotaze, Kans., to Denver, Colo., on account of excessive rate.

1407. *Southern Cotton Oil Company v. New Orleans & Northeastern Railroad Company et al.* March 12, 1908. Refund of \$53.14 on shipment of cotton-seed oil from New Orleans, La., to Detroit, Mich., on account of excessive rate.

1408. *Good Land Cypress Company v. Morgan's Louisiana & Texas Railroad Steamship Company*. March 13, 1908. Refund of \$19.52 on shipment of shingles from Chachahoula, La., to Bessemer, Ala., on account of misrouting by carrier's agent.

1409. *Eagle Roller Mill Company v. Anchor Line*. March 18, 1908. Refund of \$1 on shipment of flour from New Ulm, Minn., to Wilkes-Barre, Pa., on account of excessive estimated weight.

1410. *D. M. Baldwin, jr., v. Anchor Line*. March 18, 1908. Refund of 96 cents on carload of flour from Graceville, Minn., to Barnesboro, Pa., on account of excessive estimated weight.

1411. *New Prague Flouring Mill Company v. Anchor Line*. March 18, 1908. Refund of \$1.37 on carload of flour from New Prague, Minn., to New Bedford, Mass., on account of excessive estimated weight.

1412. *New Prague Flouring Mill Company v. Anchor Line*. March 18, 1908. Refund of \$0.77 on carload of flour from New Prague, Minn., to Baltimore, Md., on account of excessive estimated weight.

1413. *New Prague Flouring Mill Company v. Anchor Line*. March 18, 1908. Refund of \$0.49 on carload of flour from New Prague, Minn., to Baltimore, Md., on account of excessive estimated weight.

1414. *New Prague Flouring Mill Company v. Anchor Line*. March 18, 1908. Refund of \$0.73 on carload of flour from New Prague, Minn., to Baltimore, Md., on account of excessive estimated weight.

1415. *New Prague Flouring Mill Company v. Anchor Line*. March 18, 1908. Refund of \$1.37 on carload of flour from New Prague, Minn., to Campello, Mass., on account of excessive estimated weight.

1416. *New Prague Flouring Mill Company v. Anchor Line*. March 18, 1908. Refund of \$1.07 on carload of flour from New Prague, Minn., to Scranton, Pa., on account of excessive estimated weight.

1417. *New Prague Flouring Mill Company v. Anchor Line*. March 18, 1908. Refund of \$0.96 on carload of flour from New Prague, Minn., to Baltimore, Md., on account of excessive estimated weight.

1418. *New Prague Flouring Mill Company v. Anchor Line.* March 18, 1908. Refund of \$1.37 on carload of flour from New Prague, Minn., to Fall River, Mass., on account of excessive estimated weight.

1419. *New Prague Flouring Mill Company v. Anchor Line.* March 18, 1908. Refund of \$0.72 on carload of flour from New Prague, Minn., to Rimersburg, Pa., on account of excessive estimated weight.

1420. *Sleepy Eye Milling Company v. Anchor Line.* March 18, 1908. Refund of \$0.98 on carload of flour from Sleepy Eye, Minn., to Baltimore, Md., on account of excessive estimated weight.

1421. *Sleepy Eye Milling Company v. Anchor Line.* March 18, 1908. Refund of \$0.96 on carload of flour from Sleepy Eye, Minn., to Baltimore, Md., on account of excessive estimated weight.

1422. *Sleepy Eye Milling Company v. Anchor Line.* March 18, 1908. Refund of \$0.96 on carload of flour from Sleepy Eye, Minn., to Baltimore, Md., on account of excessive estimated weight.

1423. *Sleepy Eye Milling Company v. Anchor Line.* March 18, 1908. Refund of \$1.17 on carload of flour from Sleepy Eye, Minn., to Baltimore, Md., on account of excessive estimated weight.

1424. *New Prague Flouring Mill Company v. Anchor Line.* March 18, 1908. Refund of \$0.73 on carload of flour from New Prague, Minn., to Baltimore, Md., on account of excessive estimated weight.

1425. *New Prague Flouring Mill Company v. Anchor Line.* March 18, 1908. Refund of \$0.73 on carload of flour from New Prague, Minn., to Baltimore, Md., on account of excessive estimated weight.

1426. *Eagle Roller Mill Company v. Anchor Line.* March 18, 1908. Refund of \$0.47 on carload of flour from New Ulm, Minn., to Chambersburg, Pa., on account of excessive estimated weight.

1428. *Garrett & Company v. Atlantic Coast Line Railroad Company.* April 23, 1908. Refund of \$3 on 4 barrels of wine from Norfolk, Va., to La Follette, Tenn., on account of excessive rate.

1429. *Inman & Company v. Atlantic Coast Line Railroad Company.* April 28, 1908. Refund of \$31.92 on shipment of cotton from Pembroke, N. C., to Charleston, S. C., on account of excessive rate.

1430. *Whaley & Rivers v. Atlantic Coast Line Railroad Company.* April 28, 1908. Refund of \$67.59 on shipments of cotton from Williamston, and other points in North Carolina to Charleston, S. C., on account of excessive rate.

1434. *Las Vegas Mercantile Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* May 13, 1908. Refund of \$17.93 on carload of sheep from Leastalk, Cal., to Las Vegas, Nev., on account of excessive rate.

1439. *Hall & Brown Wood Working Machine Company v. Illinois Central Railroad Company.* April 11, 1908. Refund of \$15 on shipment of machinery from St. Louis, Mo., to Milepost 265, Tex., on account of carrier failing to follow shipper's instructions causing demurrage charges.

1441. *C. H. Worcester Company v. Wisconsin & Michigan Railway Company.* May 5, 1908. Refund of \$10.50 on shipment of cedar posts from Longrie, Mich., to Walcott, Iowa, on account of carrier being unable to furnish car of size ordered.

1445. *Campbell & Dann Manufacturing Company v. Nashville, Chattanooga & St. Louis Railway Company.* April 16, 1908. Refund of \$74.07 on 2 carloads of wagon material from Tullahoma, Tenn., to Galveston, Tex., on account of excessive rate.

1446. *Weber-Bussell Canning Company v. Northern Pacific Railway Company.* April 22, 1908. Refund of \$152.60 on shipment of canned fruit from Sumner, Wash., to Chicago, Ill., on account of excessive rate.

1453. *Crowder & Company v. Missouri, Kansas & Texas Railway Company.* April 27, 1908. Refund of \$28.68 on shipment of snapped corn from Rex, Okla., to Tyler, Tex., on account of excessive rate.

1455. *Crowder & Company v. Missouri, Kansas & Texas Railway Company.* May 4, 1908. Refund of \$22.50 on carload of snapped corn from Falls City, Okla., to Howe, Tex., on account of excessive rate.

1456. *The Great Western Oil Company v. Colorado & Southern Railway Company et al.* March 19, 1908. Refund of \$273.02 on tank car of gasoline from Rouseville, Pa., to Denver, Ill., on account of excessive rate.

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1457. *Bright Coy Commission Company v. Missouri, Kansas & Texas Railway Company*. April 1, 1908. Refund of \$480.53 on 64 carloads of cattle from Clearview, Ok to East St. Louis, Ill., on account of excessive rate.

1458. *McCaull-Dinsmore Company v. Great Northern Railway Company*. April 1908. Refund of \$67.34 on carload of corn from Kimball, S. Dak., to Great Falls, Mont., on account of excessive rate.

1464. *Heitshu Grant & Company v. Northern Pacific Railway Company*. April 1908. Refund of \$132.17 on carload of demijohns from Alton, Ill., to Seattle, Wash., on account of excessive rate.

1466. *Garfield Smelter Company v. San Pedro, Los Angeles & Salt Lake Railway Company*. April 18, 1908. Refund of \$5,787.77 on 10 carloads of ore from Goldfield, Nev., to Garfield, Utah, on account of excessive rate.

1467. *Superior Manufacturing Company v. Great Northern Railway Company*. April 18, 1908. Refund of \$6.20 on shipment of salt from Superior, Wis., to Minneapolis, Minn., on account of excessive rate.

1468. *Kettle River Quarries Company v. Great Northern Railway Company*. April 1908. Refund of \$33.05 on 9 carloads of creosoted paving blocks from Sandston, Minn., to Appleton, Wis., on account of excessive rate.

1472. *Twin Buttes Mining & Smelting Company v. Southern Pacific Company*. May 1, 1908. Refund of \$415.61 on shipment of crude oil from Oil City, Cal., to Tucson, Ariz., on account of excessive rate.

1475. *H. F. Watson Company v. New York, Chicago & St. Louis Railroad Company*. April 17, 1908. Refund of \$10.88 on shipments of building paper from Erie, Pa., Toledo, Ohio, on account of excessive rate.

1476. *Convoy Hoop Company v. Southern Railway Company*. March 31, 1908. Refund of \$12 on carloads of hoops from Lebanon, Tenn., to Hutchinson, Kans., on account of misrouting by carrier's agent.

1483. *American Sheet & Tin Plate Company v. Cincinnati & Muskingum Valley Railroad Company*. May 6, 1908. Refund of \$69.53 on shipment of sheet steel from Dresden, Ohio, to Wheeling, W. Va., on account of excessive rate.

1512. *American Sheet & Tin Plate Company v. Cincinnati & Muskingum Valley Railroad Company*. April 27, 1908. Refund of \$23.46 on shipment of sheet steel from Dresden, Ohio, to Houston, Tex., on account of excessive rate.

1530. *W. S. Sawrie & Son v. New Orleans & Northeastern Railroad Company*. March 30, 1908. Refund of \$9.02 on carload of sugar from New Orleans, La., to Nashville, Tenn., on account of misrouting by carrier's agent.

1532. *M. Seller & Company v. Great Northern Railway Company*. May 20, 1908. Refund of \$77.96 on 2 carloads of sheet-iron heaters from St. Louis, Mo., to Portland, Ore., on account of excessive minimum carload weight.

1534. *H. P. Binswanger Company v. New York Central & Hudson River Railroad Company*. March 27, 1908. Refund of \$4.10 on unloading carload of stone at Weehawken, N. J., on account of excessive rate.

1535. *T. P. Gordon v. St. Joseph & Grand Island Railway Company*. March 31, 1908. Refund of \$6.21 on 2 carloads of corn from Wathena, Kans., to St. Joseph, Mo., on account of excessive minimum carload weight.

1541. *Zenith Cedar Company v. Northern Pacific Railway Company*. May 22, 1908. Refund of \$14.40 on carload of poles from Corona, Minn., to Crosby, Mo., on account of carrier not being able to furnish car of size ordered.

1559. *Kola Lumber Company v. Gulf & Ship Island Railroad Company*. May 1, 1908. Refund of \$10.85 on carload of lumber from Kola, Miss., to Chicago, Ill., on account of tariff being declared illegal.

1573. *Anti-Trust Oil Company v. Colorado & Southern Railway Company*. May 12, 1908. Refund of \$166.08 on carload of gasoline from Niotaze, Kans., to Denver, Colo., on account of excessive rate.

1578. *Upham & Agler v. Illinois Central Railroad Company*. April 29, 1908. Refund of \$51.76 on carload of lumber from Cairo, Ill., to Des Moines, Iowa, on account of misrouting by carrier's agent.

1579. *C. B. Havens & Company v. Chicago, Burlington & Quincy Railroad Company*. May 11, 1908. Refund of \$584.70 on 3 carloads of cement from La Salle, Ill., to Basins and Manderson, Wyo., on account of excessive rate.

1583. *Frank Samuel v. Pennsylvania Railroad Company et al.* March 20, 1908. Refund of \$415.48 on 6 carloads of scrap iron from Columbia, S. C., to Conshohocken, Pa., on account of excessive rate.

1586. *F. M. Joplin v. Morgan's Louisiana & Texas Railroad & Steamship Company.* June 3, 1908. Refund of \$137.38 on carload of rough rice from Mackey, Tex., to Mermentau, La., on account of excessive rate.

1589. *E. T. Hines & Company v. Southern Railway Company.* April 14, 1908. Refund of \$121.46 on carload of rosin from Riderville, Ala., to Savannah, Ga., on account of excessive rate.

1591. *Marshall-Wells Hardware Company v. Northern Pacific Railway Company.* April 29, 1908. Refund of \$218.08 on carload of bar iron from Duluth, Minn., to Sand Point, Idaho, on account of excessive rate.

1600. *George Boun Company v. Chicago & Northwestern Railway Company.* April 22, 1908. Refund of \$65 on shipment of flour from Creighton, Nebr., to Douglas, Wyo., on account of excessive rate.

1601. *Sheehan & Fisher v. Chicago & Northwestern Railway Company.* April 21, 1908. Refund of \$104.98 on carload of flour and feed from Neligh, Nebr., to Lander, Wyo., on account of excessive rate.

1604. *Berthold & Jennings v. St. Louis Southwestern Railway Company.* May 22, 1908. Refund of \$9.49 on carload of oak lumber from Weiner, Ark., to Oelwein, Iowa, on account of misrouting by carrier's agent.

1608. *Detroit Salt Company v. Gulf, Colorado & Santa Fe Railway Company.* May 20, 1908. Refund of \$23.74 on carload of salt from Detroit, Mich., to Clifton, Tex., on account of excessive rate.

1609. *Detroit Salt Company v. Gulf, Colorado & Santa Fe Railway Company.* May 20, 1908. Refund of \$23.89 on carload of salt from Detroit, Mich., to Haslet, Tex., on account of excessive rate.

1611. *Trinity Lumber Company v. Gulf, Colorado & Santa Fe Railway Company.* April 13, 1908. Refund of \$27.84 on shipment of lumber from Beach, Tex., to Heyworth, Ill., on account of misrouting by carrier's agent.

1612. *Stetson, Cutler & Company v. Boston & Albany Railroad Company.* May 8, 1908. Refund of \$7.53 on carload of lumber from Griswold, Me., to Spencer, Mass., on account of excessive rate.

1613. *Marquette Cement Manufacturing Company v. Chicago, Burlington & Quincy Railroad Company.* April 17, 1908. Refund of \$8.55 on carload of cement from La Salle, Ill., to East Chicago, Ind., on account of excessive rate.

1618. *Boren-Stewart Company v. Gulf, Colorado & Santa Fe Railway Company.* March 25, 1908. Refund of \$29.95 on shipment of salt from Detroit, Mich., to Denton Tex., on account of excessive rate.

1627. *Hibbing Produce Company v. Great Northern Railway Company.* April 14, 1908. Refund of \$2.56 on shipment of vegetables from Minneapolis, Minn., to Hibbing, Minn., on account of oversight in publishing tariff.

1631. *John W. Gregory v. Chesapeake Beach Railway Company.* May 1, 1908. Refund of \$24.58 on carload of coke from Chesapeake Junction, District of Columbia, to District line, Maryland, on account of excessive rate.

1643. *Kola Lumber Company v. Gulf & Ship Island Railroad Company.* April 13, 1908. Refund of \$9.94 on shipment of lumber from Kola, Miss., to St. Louis, Mo., on account of tariff being declared illegal by the Commission.

1646. *Suffolk Peanut Company v. Atlantic Coast Line Railroad Company.* April 28, 1908. Refund of \$25.20 on 2 carloads of peanuts from Williamston, N. C., to Suffolk, Va., on account of excessive rate.

1648. *C. W. Robinson Lumber Company v. Gulf & Ship Island Railroad Company et al.* April 18, 1908. Refund of \$24.48 on 2 carloads of lumber from Harmonica, Miss., to Chicago, Ill., on account of excessive rate.

1658. *Florida Cotton Oil Company v. Atlantic Coast Line Railroad Company et al.* May 15, 1908. Refund of \$27 on carload of cotton-seed meal from Jacksonville, Fla., to Bowman, S. C., on account of misrouting by carrier's agent.

1660. *H. F. Dunbar v. Atchison, Topeka & Santa Fe Railway Company.* April 24, 1908. Refund of \$78.35 on carload of potatoes from Holt, Cal., to Clifton, Ariz., on account of excessive rate.

1669. *Menomonie Hydraulic Press Brick Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* May 21, 1908. Refund of \$30 on carload of brick from Menomonie, Wis., to Guthrie, Okla., on account of excessive rate.

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1687. *The Interstate Sand Company v. Cincinnati & Muskingum Valley Railroad Company.* April 14, 1908. Refund of \$22.47 on 7 carloads of sand from Zanesville, Ohio, to Allegheny, Pa., on account of excessive rate.

1690. *Colorado Fuel & Iron Company v. Colorado & Southern Railway Company.* May 6, 1908. Refund of \$295.49 on 2 carloads of rails and fastenings from Minneapolis, Colo., to Dawson, N. Mex., on account of excessive rate.

1692. *Sanford Richards v. Chicago, Burlington & Quincy Railroad Company.* May 5, 1908. Refund of \$3.89 on carload of rye from Orleans, Nev., to Kansas City, Mo. on account of excessive rate.

1693. *C. F. Pressley v. Denver & Rio Grande Railroad Company.* April 23, 1908. Refund of \$43.90 on shipment of apples from Ogden, Utah, to Canon City, Colo., on account of excessive rate.

1702. *Southern Mills Company v. Texas & New Orleans Railroad Company.* April 29, 1908. Refund of \$12 on carload of lumber from Ponto, Tex., to Three River, Mich., on account of misrouting by carrier's agent.

1706. *J. W. Mahan Lumber Company v. Chesapeake & Ohio Railway Company.* April 30, 1908. Refund of \$52.52 on carload of lumber from Mahan, W. Va., to Brooklyn, N. Y., on account of misrouting by carrier's agent.

1708. *American Tobacco Company v. Norfolk & Western Railway Company.* May 12, 1908. Refund of \$2.83 on shipment of tobacco from Durham, N. C., to Calumet, Mich., on account of excessive rate.

1711. *James Lumber Company v. Norfolk & Western Railway Company.* May 1908. Refund of \$40.48 on carload of lumber from Farintosh, N. C., to Black Rock, N. Y., on account of misrouting by carrier's agent.

1734. *Wayfield Electric Company v. Great Northern Railway Company.* April 2, 1908. Refund of \$41.67 on 8 carloads of coal from Superior, Wis., to Bemidji, Minn. on account of excessive rate.

1748. *Kaye & Carter Lumber Company v. Chicago & Northwestern Railway Company.* May 19, 1908. Refund of \$1.80 on shipment of poles from Hines, Minn., to Fairfax, S. Dak., on account of tariff not providing for stake allowance.

1749. *Kaye & Carter Lumber Company v. Chicago & Northwestern Railway Company.* May 19, 1908. Refund of \$1.45 on carload of posts from Hines, Minn., to Lincoln, Nebr., on account of tariff not providing for stake allowance.

1750. *Kaye & Carter Lumber Company v. Chicago & Northwestern Railway Company.* May 19, 1908. Refund of \$1.45 on shipment of poles from Hines, Minn., to Lincoln, Nebr., on account of tariff not providing for stake allowance.

1792. *Blackwell's Durham Tobacco Company v. Norfolk & Western Railway Company.* May 11, 1908. Refund of \$1.40 on shipment of tobacco from Durham, N. C. to Calumet, Mich., on account of error in publication of rate.

1824. *D. G. Pensfield Company v. New York, New Haven & Hartford Railroad Company.* April 27, 1908. Refund of \$43.31 on shipment of sugar from New York, N. Y. to Danbury, Conn., on account of excessive rate.

1839. *Acme Milling Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company.* April 27, 1908. Refund of \$7.35 on 3 shipments of flour from Indianapolis, Ind., to Chicago, Ill., on account of excessive rate.

1846. *Las Vegas & Tonopah Railroad Company v. San Pedro, Los Angeles & San Lake Railroad Company.* May 18, 1908. Refund of \$309.40 on shipment of car wheel from Las Vegas, Nev., to Los Angeles, Cal., on account of excessive rate.

1851. *Procter & Gamble Company v. Baltimore & Ohio Southwestern Railroad Company.* April 23, 1908. Refund of \$26.73 on shipment of cotton-seed oil from Ironton, Ohio, to Philadelphia, Pa., on account of excessive rate.

1872. *Northland Pine Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* May 2, 1908. Refund of \$16.95 on carload of lumber from Minneapolis, Minn., to Appleton, Wis., on account of excessive rate.

1893. *Pine Belt Lumber Company v. St. Louis & San Francisco Railroad Company.* April 29, 1908. Refund of \$9.74 on carload of lumber from Swink, Okla., to Burlington, Iowa, on account of misrouting by carrier's agent.

1894. *Mississippi Box Company v. St. Louis & San Francisco Railroad Company.* May 6, 1908. Refund of \$50.80 on 6 carloads of lumber from Marston, Mo., to Muscatine, Iowa, on account of misrouting by carrier's agent.

1897. *Chicago, Burlington & Quincy Railroad Company v. St. Louis & San Francisco Railroad Company.* April 29, 1908. Refund of \$9.68 on carload of staves from Kennett, Mo., to Davenport, Iowa, on account of misrouting by agent of Chicago, Burlington & Quincy Railroad Company.

1902. *Metropolis Bending Company v. St. Louis & San Francisco Railroad Company.* April 27, 1908. Refund of \$9.23 on 2 carloads of lumber from Frenchmans Bayou, Ark., to Metropolis, Ill., on account of misrouting by carrier's agent.

1907. *Agent at Maysville, Okla., of the Atchison, Topeka & Santa Fe Railway Company v. St. Louis & San Francisco Railroad Company.* May 18, 1908. Refund of \$1.95 on shipment of household goods from Kingston, Okla., to Maysville, Okla., on account of misrouting by carrier's agent.

1915. *L. Starks Company v. Manistee & Northeastern Railroad Company.* May 8, 1908. Refund of \$29.76 on shipment of potatoes from Buckley, Mich., to Chicago, Ill., on account of excessive rate.

1922. *Moline Plow Company v. Chicago, Rock Island & Pacific Railway Company.* May 7, 1908. Refund of \$2.02 on carload of agricultural implements from Moline, Ill., to Cullman, Ala., on account of misrouting by carrier's agent.

1936. *Leavenworth, Kansas & Western Railway Company v. Chicago, Rock Island & Pacific Railway Company.* May 18, 1908. Refund of \$30.56 on carload of lumber from Wheatley, Ark., to Wheaton, Kans., on account of misrouting by carrier's agent.

1941. *H. J. Schaub v. Chicago, Rock Island & Pacific Railway Company.* April 24, 1908. Refund of \$108 on carload of apples from Wallace, Mo., to San Angelo, Tex., on account of misrouting by carrier's agent.

1948. *East St. Louis Walnut Company v. St. Louis, Iron Mountain & Southern Railway Company.* May 1, 1908. Refund of \$141.86 on 15 carloads of walnut logs from various points to East St. Louis, Ill., on account of excessive rates.

1950. *Sleepy Eye Milling Company v. Anchor Line.* April 22, 1908. Refund of \$0.96 on carload of flour from Milwaukee, Wis., to Baltimore, Md., on account of excessive rate.

1956. *Mason Machine Works v. Southern States Despatch.* April 24, 1908. Refund of \$110.88 on 2 carloads of cotton-mill machinery from Taunton, Mass., to Habersham, Ga., on account of excessive rate.

1962. *American Tobacco Company v. Norfolk & Western Railway Company.* May 14, 1908. Refund of \$38.59 on 4 carloads of tobacco from Ripley, Ohio, to St. Louis, Mo., on account of excessive rate.

1963. *Sleepy Eye Milling Company v. Anchor Line.* April 22, 1908. Refund of \$0.98 on carload of flour from Sleepy Eye, Minn., to Baltimore, Md., on account of excessive rate.

1964. *Elysian Milling Company v. Anchor Line.* April 22, 1908. Refund of \$1.20 on carload of flour from Elysian, Minn., to Baltimore, Md., on account of excessive rate.

1965. *Star & Crescent Milling Company, v. Anchor Line.* April 22, 1908. Refund of \$1.27 on carload of flour from Chicago, Ill., to Camden, N. J., on account of excessive rate.

1966. *Willmar Milling Company v. Anchor Line.* April 22, 1908. Refund of \$1.29 on carload of flour from Willmar, Minn., to Butler, Pa., on account of excessive rate.

1967. *George Tileston Milling Company v. Anchor Line.* April 22, 1908. Refund of \$1.20 on carload of flour from St. Cloud, Minn., to Haverhill, Mass., on account of excessive rate.

1976. *Chicago Lumber & Coal Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* May 4, 1908. Refund of \$9.70 on carload of lumber from Couderay, Wis., to East Moline, Ill., on account of misrouting by carrier's agent.

1980. *Robert S. Wilson v. Chicago, Rock Island & Pacific Railway Company.* May 6, 1908. Refund of \$5.97 on carload of shingles from Burlington, Wash., to Hodgenville, Ky., on account of misrouting by carrier's agent.

1982. *Pine Tree Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* April 27, 1908. Refund of \$5.41 on carload of lumber from Winona, La., to Beason, Ill., on account of misrouting by carrier's agent.

1983. *Simon Brothers v. Chicago, Rock Island & Pacific Railway Company.* May 6, 1908. Refund of \$5.80 on carload of showcases and lumber from Grand Rapids, Mich., to Bronson, Tex., on account of misrouting by carrier's agent.

1984. *Dodds Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. April 27, 1908. Refund of \$10.08 on carload of lumber from Griffiths ville, Ark., Norwalk, Iowa, on account of misrouting by carrier's agent.

1987. *C. A. Price Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. May 7, 1908. Refund of \$45.89 on carload of lumber from Conant, Ark., Sedgewick, Kans., on account of misrouting by carrier's agent.

1994. *South Canon Coal Company v. Colorado & Wyoming Railway Company et al*. April 30, 1908. Refund of \$33 on carload of coal from Walsenburg, Colo., to Guernsey, Wyo., on account of excessive rate.

1996. *W. A. Tully Grain Company v. Missouri, Kansas & Texas Railway Company*. May 1, 1908. Refund of \$27.36 on 4 carloads of snapped corn from Coweta, Okla., to Weimar and Columbus, Tex., on account of excessive rate.

2027. *American Can Company v. Illinois Central Railroad Company*. April 30, 1908. Refund of \$5 on shipment of tin cans from Maywood, Ill., to New Orleans, La., on account of misrouting by carrier's agent.

2029. *C. D. Amos v. Santa Fe, Prescott & Phoenix Railway Company*. May 12, 1908. Refund of \$10.08 on shipment of horses and burros from Phoenix, Ariz., to Ash Fork, Ariz., on account of carrier using larger car than ordered.

2031. *Central Broom Company v. Missouri Pacific Railway Company*. May 6, 1908. Refund of \$1.21 on shipment of brooms from Jefferson City, Mo., to New Hampton, Iowa, on account of misrouting by carrier's agent.

2033. *William E. Uptegrove & Brother v. New Orleans & Northeastern Railway Company*. May 4, 1908. Refund of \$11.58 on carload of lumber from Natchez, Miss., to New York, N. Y., on account of misrouting by carrier's agent.

2040. *Lesser Goldman Cotton Company v. Missouri Pacific Railway Company*. May 5, 1908. Refund of \$10.27 on shipment of cotton from Van Buren, Ark., to Fall River, Mass., on account of misrouting by carrier's agent.

2041. *Arkansas Brick Manufacturing Company v. Missouri Pacific Railway Company*. May 1, 1908. Refund of \$38.60 on 3 carloads of cement from Hannibal, Mo., to Little Rock, Ark., on account of oversight in publishing tariff.

2047. *Acme Milling Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company*. May 11, 1908. Refund of \$122.50 on shipments of flour from Indianapolis, Ind., to Louisville, Ky., on account of excessive rate.

2048. *Acme Milling Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company*. May 7, 1908. Refund of \$8.08 on 2 carloads of flour from Indianapolis, Ind., to Middlesboro, Ky., on account of error in publishing rates.

2058. *Central Broom Company v. Missouri Pacific Railway Company*. April 30, 1908. Refund of 69 cents on shipment of brooms from Jefferson City, Mo., to Wibaux, Mont. on account of misrouting by carrier's agent.

2090. *Western Chemical Manufacturing Company v. Denver & Rio Grande Railroad Company et al*. June 2, 1908. Refund of \$46.20 on carload of ammoniacal liquor from Salt Lake City, Utah, to Denver, Colo., on account of excessive minimum carload weight.

2112. *Sunderland Brothers Company v. Chicago, Burlington & Quincy Railroad Company*. May 27, 1908. Refund of \$4.40 on carload of soft coal from East St. Louis, Ill. to Council Bluffs, Iowa, on account of excessive rate.

2123. *Barr Clay Company v. Atchison, Topeka & Santa Fe Railway Company*. May 23, 1908. Refund of \$53.50 on 8 carloads of brick from Streator, Ill., to Milwaukee, Wis., on account of excessive rate.

2155. *Federal Rolling Mill Company v. Delaware, Lackawanna & Western Railroad Company*. May 22, 1908. Refund of \$31.12 on carload of sand from Northumberland Pa., to Elmira Heights, N. Y., on account of excessive rate.

2167. *Burton-Smith Company v. El Paso & Southwestern Railroad Company*. May 5, 1908. Refund of 73 cents on shipment of tea from San Francisco, Cal., to Bisbee, Ariz., on account of excessive rate.

2169. *Burton-Smith Company v. El Paso & Southwestern Railroad Company*. May 5, 1908. Refund of \$54.47 on shipment of potatoes and onions from San Francisco, Cal., to Bisbee, Ariz., on account of excessive rate.

2172. *Daboritch & Jovanovich v. El Paso & Southwestern Railroad Company*. May 6, 1908. Refund of \$0.62 on shipment of olive oil from San Francisco, Cal., to Bisbee, Ariz., on account of excessive rate.

2173. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern Railroad Company.* May 6, 1908. Refund of \$0.85 on shipment of calico from Kansas City, Mo., to Douglas, Ariz., on account of excessive rate.

2181. *J. H. Hughes v. El Paso & Southwestern Railroad Company.* May 6, 1908. Refund of \$3.36 on shipment of skirt leather from Santa Clara, Cal., to Bisbee, Ariz., on account of excessive rate.

2184. *Rafaelovich & Brajovich v. El Paso & Southwestern Railroad Company.* May 5, 1908. Refund of \$2.28 on shipment of olive oil from San Francisco, Cal., to Bisbee, Ariz., on account of excessive rate.

2186. *E. B. Mason & Company v. El Paso & Southwestern Railroad Company.* May 6, 1908. Refund of \$1.21 on shipment of leather from San Francisco, Cal., to Bisbee, Ariz., on account of excessive rate.

2197. *Duluth Iron & Metal Company v. Northern Pacific Railway Company.* May 12, 1908. Refund of \$9.37 on carload of scrap iron from Duluth, Minn., to St. Louis, Mo., on account of misrouting by carrier's agent.

2198. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern Railroad Company.* May 11, 1908. Refund of \$6.79 on shipment of candy from Kansas City, Mo., to Bisbee and Douglas, Ariz., on account of excessive rate.

2211. *Moctezuma Copper Company v. El Paso & Southwestern Railroad Company.* May 11, 1908. Refund of \$78 on shipment of rice from San Francisco, Cal., to Douglas, Ariz., on account of excessive rate.

2252. *Rafaelovich & Brajovich v. El Paso & Southwestern Railroad Company.* May 11, 1908. Refund of \$1.14 on shipment of tea from San Francisco, Cal., to Bisbee, Ariz., on account of excessive rate.

2282. *Fisher & Hickey v. El Paso & Southwestern Railroad Company.* May 14, 1908. Refund of \$42 on shipment of potatoes and onions from Sacramento, Cal., to Bisbee, Ariz., on account of excessive rate.

2383. *W. W. Wheeler Lumber & Bridge Supply Company v. Chicago, Rock Island & Pacific Railway Company.* May 20, 1908. Refund of \$16.20 on carload of lumber from Hazen, Ark., to Napoleon, Mo., on account of misrouting by carrier's agent.

2395. *C. E. Healy & Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* May 18, 1908. Refund of \$29.93 on shipment of potatoes from Itasca, Minn., to Camp Point, Ill., on account of misrouting by carrier's agent.

2425. *E. H. Young v. Missouri, Kansas & Texas Railway Company.* May 22, 1908. Refund of \$36.40 on carload of cotton-seed meal from Purcell, Okla., to Galveston, Tex., on account of excessive rate.

2442. *J. H. Everett & Son v. Nashville, Chattanooga & St. Louis Railway Company.* May 21, 1908. Refund of \$52.80 on shipment of seed cane from Lewisburg, Tenn., to Atlanta, Ga., on account of excessive rate.

2443. *R. B. Whiteside v. Northern Pacific Railway Company.* May 20, 1908. Refund of \$20.36 on carload of oats from Duluth, Minn., to Park Falls, Wis., on account of excessive minimum carload weight.

2461. *J. A. Gallant v. Louisville & Nashville Railroad Company.* May 20, 1908. Refund of \$15.95 on shipment of sugar from New Orleans, La., to Tumlin Gap, Ala., on account of excessive rate.

2490. *Hamm Brewing Company v. Minneapolis & St. Louis Railroad Company.* May 23, 1908. Refund of \$24.20 on 3 shipments of beer from St. Paul, Minn., to Watertown, S. Dak., on account of excessive minimum carload weight.

2491. *Hamm Brewing Company v. Minneapolis & St. Louis Railroad Company.* May 25, 1908. Refund of \$18.33 on 6 shipments of beer from St. Paul, Minn., to Oskaloosa, Iowa, on account of excessive rate.

2569. *T. F. Schmucker v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* May 27, 1908. Refund of \$36.02 on shipment of household goods from El Paso, Tex., to Denver, Colo., on account of excessive rate.

2585. *Merrill & Company v. Alabama & Vicksburg Railway Company.* June 1, 1908. Refund of \$34.58 on carload of lumber from Lake, Miss., to Lincoln Center, Kans., on account of misrouting by carrier's agent.

2648. *L. Starks Company v. Missouri, Kansas & Texas Railway Company.* June 3, 1908. Refund of \$18 on carload of potatoes from Wild Rose, Wis., to Muskogee, Okla., on account of excessive rate.

[REDACTED]

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ABSORPTION.

Under the circumstances stated in the report the Kansas City Southern Railway should give to the complainant the benefit of the \$3 switching charge which it absorbs when delivery is made to a connection for switching purposes within the switching limits of Kansas City, although in this case the delivery to the Belt Railway is without such switching limits. *Leonard v. K. C. S. Ry. Co.* et al. 573.

Local rates to junction points in groups with long haul. *Frye & Bruhn et al. v. N. Pac. Ry. Co.* et al. 501.

Switching charges. *La Salle & Bureau County R. R. Co. v. C. & N. W. Ry. Co.* 610.

Johnston & Larimer et al. v. A., T. & S. F. Ry. Co. et al. 388

Switching charges provided in tariff when joint rate above \$10. *Wellington et al. v. St. L. & S. F. R. R. Co.* 534.

ACCOUNTING.

Investigation at instance of a stockholder refused. *Manning v. C. & A. R. R. Co.* et al. 125.

ACT EFFECTIVE.

Act passed June 29, 1906, postponed by resolution sixty days; effective August 28, 1906.

Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al. 418.

Goff-Kirby Coal Co. et al. v. B. & L. E. R. R. Co. 383.

Hussey v. C., R. I. & P. Ry. Co. 366.

ACT TO REGULATE COMMERCE.

Creates a special tribunal with power to determine causes involving a right which long existed at common law to recover for an unreasonable transportation charge. *Hussey v. C., R. I. & P. Ry. Co.* 366.

ADJACENT.

The word "adjacent," as used in the act to modify the words "foreign country," would seem to mean adjacent in the sense of the possibility of substantial continuity of rails. *Lykes S. S. Line v. Commercial Union et al.* 310.

This Commission has no jurisdiction as to shipments moving from ports of the United States to a foreign country not adjacent when such shipments are not carried by rail, or by rail and water, from an inland point of origin to a port of transshipment. An inland movement of export or import traffic is a condition precedent to the attaching of jurisdiction. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.* et al. 266.

ADMINISTRATIVE BODY.

This Commission is the creature of statute, and its authority is derived from the act of Congress creating the Commission and the various amendments. Its function is to administer the act to regulate commerce and not to enforce conditions found in Federal or other charters. While a violation of the conditions

of the acts of Congress granting the rights of way may be grounds for forfeiture the remedy is in the courts, as it is not the province of this Commission to enforce compliance with conditions subsequent found in railroad charter *Haines v. C., R. I. & P. Ry. Co.* et al. 214.

The complaint in this case was filed the day after certain interstate rates had been suspended for the winter; but it appeared, when the complaint came on for hearing, that the rates had been restored. Upon objection made that the Commission was without jurisdiction to proceed except upon a new or amended complaint; *Held*, That the point was not well taken; and that, having jurisdiction when the complaint came on to be heard the Commission, being an administrative body, ought not to delay the hearing upon a purely technical objection that does not reach the merits of the controversy. *Benton Transit Co. v. B. H. St. J. Ry. & L. Co.* 542.

Act to regulate commerce creates a special administrative tribunal. *Hussey v. C., R. I. & P. Ry. Co.* 360.

ADVANCES IN RATES.

The increases in the through rates made since defendant's amended answer to this complaint was filed are unreasonable and unjust. Through route and joint rates not in excess of the sums of the local rates which were in effect when such amended answer was made are ordered. *Memphis Freight Bureau v. F. S. & W. R. R. Co.* et al. 1.

The rates were low before the increase, but having been established after prolonged negotiations especially for the purpose of permitting complainant to reach a particular market, and in preference to making a readjustment in some other direction or territory, and complainant having adjusted its business thereto, defendants may not by an arbitrary advance in those rates destroy complainant's business, there being no evidence that the rates advanced were less than the cost of service. *New Albany Furniture Co. v. M. J. & K. C. R. R. Co.* et al. 594.

The greater portion of the advance in rates condemned as unreasonable and unjust under the facts in these cases, and reparation awarded. *Id.*

Express rates on cream. *Reynolds v. Southern Express Co.* 536.

Hardwood lumber from Chicago points to Pacific coast terminals. *Burge et al. v. Transcontinental Freight Bureau et al.* 608.

Hardwood lumber from Memphis to New Orleans. *Thompson Lumber Co. v. I. C. R. R. Co.* et al. 657.

Increase in cost of operation justifies advance of rates; increase of traffic requires decrease of rates. *Cattle Raisers' Assn. of Texas v. M., K. & T. R. Co.* et al. 418.

Detroit Chemical Works v. Nor. Cent. Ry. Co. et al. 357.

Wyman, Partridge & Co. v. B. & M. R. R. et al. 258.

AGENT.

Peculiarly the duty of, to offer reasonable assistance to shippers. In *Released Rates*, 550.

AGREED VALUATION.

If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value, (a) the stipulation is valid when loss occurs through causes beyond the carrier's control; (b) the stipulation is valid, even when loss is due to the carrier's negligence, if the shipper himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith; (c) the stipulation is void as against loss due

the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value; (d) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount. In re Released Rates, 550.

AGRICULTURAL MACHINERY.

Rates on. Minneapolis Threshing Machine Co. v. C., R. I. & P. Ry. Co. 128.

ALLOWANCES.

When rates are filed and published, carriers must abide thereby. No allowances of any kind not specified in tariffs can lawfully be paid. La Salle & Bureau County R. R. v. C. & N. W. Ry. Co. 610.

ALL-WATER CARRIAGE.

Congress has not sought to exercise control over it. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al. 266.

ANTITRUST ACT.

Fixing rates by concerted action leads to more careful scrutiny, but not conclusive of the unreasonableness of rates. Railroad Commission of Kentucky v. L. & N. R. R. Co. et al. 300.

Referred to in pleading. Pittsburg Plate Glass Co. v. P. C. C. & St. L. Ry. Co. et al. 87.

ARBITRARY.

Central Freight Association territory on all classes from Henderson above Evansville rates. Railroad Commission of Kentucky v. L. & N. R. R. Co. et al. 300.

Grain to New England from New York. Banner Milling Co. v. N. Y. C. & H. R. R. Co. 31.

Grain, St. Louis to Texarkana from Little Rock. Traffic Bureau, etc. of St. Louis v. Mo. Pac. Ry. Co. et al. 105.

Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

Traffic Bureau etc. v. Mo. Pac. Ry. Co. et al. 11.

BACK HAUL.

To the compress where there is a higher rate to destination than from origin, the higher rate usually applies. Chickasaw Compress Co. et al. v. G. C. & S. F. Ry. Co. et al. 187.

BANANAS.

Rates on. New Orleans to Memphis. Thompson Lumber Co. v. I. C. R. R. Co. et al. 657.

Traffic, routes, and rates. Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al. 620.

BAR.

The bringing of a suit in the United States circuit court for the recovery of excessive railway charges is not a bar to a subsequent proceeding before this Commission where that suit was dismissed without prejudice, and for the reason that the Commission had never passed upon the reasonableness of the rate involved. Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 320.

A complaint by a voluntary association demanding reparation under general averments which do not name the members on whose behalf it is filed and do

not with reasonable particularity specify and describe the shipments as to which the complaint is made, does not operate to stop the running of the period of limitation provided in the law; and does not give the members of the association the opportunity subsequently to come in and take advantage of the complaint by proving up their shipments, which would be barred of relief upon separate and individual complaints if then filed by themselves. *Mo. & Kan. Shippers' Assn. v. A., T. & S. F. Ry. Co.* 411.

RASING RATE.

Rates from eastern destinations to Denver are constructed by adding together rates to the Missouri River and from the Missouri River and applying to the resulting base rate the graduate scale. The rate upon small packages thus obtained is much less than the sum of the locals upon the same package to and from the Missouri River and somewhat less up to 50 pounds in weight. The great majority of packages handled are under 50 pounds; *Held*, That this method of constructing through rates was not unlawful, for while the rate upon packages weighing 50 pounds and over would be somewhat high, the total result was reasonable. *Kindel v. Adams Express Co. et al.* 475.

Southern points to Ohio River. *Reliance Textile & Dye Works v. Southern Ry. Co. et al.* 48.

BEER.

A rate of 45 cents applied to the transportation of beer from Pueblo to Leadville, which is part of a through transportation from St. Louis to Leadville, is excessive; such rate should not exceed 30 cents per 100 pounds. *Reparation awarded. Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al.* 329.

Mixed carloads with mineral water. *Milwaukee-Waukesha Brewing Co. v. C., M. & St. P. Ry. Co. et al.* 28.

BILL OF LADING.

It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law. *In re Released Rates.* 550.

The defendants advanced their through rates from eastern points to Chicago and Minneapolis 3 cents per 100 pounds on first class and 1½ cents on Rule 25, etc., and these new rates included the cost of marine insurance. The bill of lading issued did not show definitely the rights of the shippers thereunder; *Held*, That the advanced rates are unreasonable and should be reduced unless the carriers issue bills of lading making them responsible for loss by perils of the sea. *Wyman, Partridge & Co. et al. v. B. & M. R. R. et al.* 258.

Exhibit as shipping receipt. *Leonard v. K. C. S. Ry. Co. et al.* 573.

Local waybill. *Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al.* 329.

Manipulation of billing in reshipment. *Traffic Bureau, etc., of St. Louis v. Mo. Pac. Ry. Co. et al.* 105.

Provisions of, should be fair and unambiguous and free from suspicion of illegality. *In re Released Rates.* 550.

State road, by giving through billing, becomes an interstate carrier. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.* 266.

Weights, failure to correct billing after ascertaining actual weights. *Romona Oolitic Stone Co. v. Vandalla R. R. Co.* 115.

BIRCH.

Value and rates to Pacific coast. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

BLANKET RATE.

Coal for Nebraska points from Rock Springs and Hanna. Nebraska State Railway Commission v. U. P. R. R. Co. 349.

General over territory between Missouri River and Chicago common points. Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al. 56.

Transcontinental lines. Phillips-Trawick-James Co. et al. v. So. Pac. Co. et al. 644.

Burgess v. Transcontinental Freight Bureau et al. 668.

BOTH DIRECTIONS.

Rates not necessarily the same. Burgess et al. v. Transcontinental Freight Bureau et al. 668.

BRICK.

Enameled brick and press brick, description and rates. Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al. 342.

Paving brick, rates on, from Galesburg, Ill., and Kansas points. Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

BRIDGE TOLL.

At Memphis on lumber and staves. Thompson Lumber Co. v. I. C. R. R. Co. et al. 657.

BROOM CORN.

Rates on. Coomes & McGraw v. C., M. & St. P. Ry. Co. et al. 192.

BROOMS.

Classification of. Forest City Freight Bureau v. Ann Arbor R. R. Co. et al. 109.

BRUSHES.

The inclusion of wire brushes and brooms, not toilet, in cases in less than car-loads, in the first class is unreasonable. Defendants ordered to classify such brushes and brooms in the third class. Forest City Freight Bureau v. Ann Arbor R. R. Co. et al. 109.

CABBAGE.

Rates on. Chicago & Milwaukee Elec. R. R. v. I. C. R. R. Co. et al. 20.

CABLE.

Rates on rope cable. Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al. 56.

CAMERAS.

While defendants' rate on camera and camera stands from St. Louis to Denver is high, it is not so excessive as to warrant interference. Merchants' Traffic Asso. v. A., T. & S. F. Ry. Co. et al. 283.

CANAL AND LAKE.

Route, through rate, Erie Canal to Buffalo and thence via Great Lakes and rail. Wyman, Partridge & Co. et al. v. B. & M. R. R. et al. 258.

CANAL COMPETITION.

On shipments of pyrites, New York to Buffalo. Detroit Chemical Works v. Nor. Cent. Ry. Co. et al. 357.

CANNED GOODS.

Rates on. Phillips-Trawick-James Co. et al. v. So. Pac. Co. et al. 644.

CANNEL COAL.

In this case to take same rate as bituminous. *Goff-Kirby Coal Co. et al. B. & L. E. R. R. Co.* 383.

CAPITALIZATION.

This is equally true of the capitalization of the defendants in this proceeding which bears no relation whatever to the actual investment necessary to the conduct of the business. *Kindel v. Adams Express Co. et al.* 475.

Atchison, Topeka & Santa Fe Ry. Co. *Cattle Raisers' Asso. of Texas v. M. & T. Ry. Co. et al.* 418.

CAR DELAY.

Increase in rate not justified on account of delay an outgrowth of general congestion throughout the country. *Thompson Lumber Co. et al. v. I. C. R. Co. et al.* 657.

CAR DISTRIBUTION.

Complaint alleges that the method of car distribution known as the "coke oven basis," enforced by defendant railway company in the Pocahontas No. 1 coal district in West Virginia, unduly discriminates against complainant and asks that the so-called "capacity basis" of car distribution be adopted. *Held*, upon all the facts and circumstances in the case, that the coke-oven basis does not fairly measure the relative rights of the various operators in said coal district, but unduly discriminates against complainant and operates to the unreasonable preference of other mining companies in the same field. *Powhatan Coal & Coke Co. v. N. & W. Ry. Co. et al.* 60.

Complaint alleges that since July 13, 1906, the Detroit & Mackinac Railway Company has discriminated against complainants in furnishing cars for interstate shipments of ice from Tobico, Mich., and that rates charged by defendant on ice from Tobico to points in Ohio are unreasonable; *Held*, under the circumstances disclosed by the record, that complainants were not unduly prejudiced in their car supply, and that the joint rates on ice from Tobico to points in Ohio are not shown to be unreasonable per se or relatively. Complaint dismissed. *Wagner, Zagelmeyer & Co. v. Det. & Mac. Ry. Co. et al.* 160.

The plan of car distribution practiced by the defendant was unduly preferential of the fuel-contract mines, and resulted in an unreasonable disadvantage to the purely commercial lines. *Royal Coal & Coke Co. v. So. Ry. Co.* 440.

In the matter of car distribution, where there is an inadequate supply of coal cars, the only regulation or practice in respect to the transportation of coal from the mines that is just, fair, and reasonable to be hereafter followed is to allow to each mine its fair and just proportion of the coal cars, estimated upon its justly ascertained capacity, and without regard to whether the mine furnishes partly fuel coal and partly commercial coal, or commercial coal only. *Id.*

In establishing systems of car distribution, defendants have given the mines located on their respective lines daily tonnage ratings, which ratings are now at issue in this controversy. Under the systems established each mine is entitled daily to such percentage of cars as its tonnage rating bears to the total number of cars available for distribution for commercial purposes. Defendants' fuel cars, foreign railway fuel cars, and private cars are not charged against the distributive share of the mines to which they are assigned. Complainant contends that this plan of distribution gives to some mines more cars than they are entitled to under their several ratings, and unjustly discriminates against it and other mines and mine owners. *Traer v. C. & A. R. R. Co.* 451.

Reparation on account of alleged unjust discrimination of defendant in not furnishing complainant with his proper share of cars for shipment of grain at Wood River, Nebr., in November and December, 1906, while during that time complainant's competitors at that station were favored with grain cars, denied, as the testimony discloses that the time mentioned was during the car-shortage season, and that the business of complainant and his competitors suffered in common during that time, and no undue discrimination in furnishing cars by defendant was satisfactorily shown. *MacMurray v. U. P. R. R. Co.* 531.

Use by some dealers of the so-called "private" hay cars. *Ruttie et al. v. P. M. R. R. Co.* 179.

CAR FITTING.

Certain shippers applied for cars to ship hay, which the carrier, by reason of car shortage, could not furnish at the time and place desired; the carrier informed the shippers that it had certain cattle cars which it could furnish if the shippers would clean and suitably prepare them for the shipments of their hay at their own cost and expense; the shippers accepted these cars upon these terms, cleaned and prepared them, and shipped their hay therein, and then claimed reparation for the cost and expense incurred by them; *Held*, upon the foregoing statement of facts, that the shippers' claim for reparation based on cost of preparing said cattle cars, be denied and their complaint be dismissed. *Laning-Harris Coal & Grain Co. et al. v. St. L. & S. F. R. R. Co.* et al. 148.

Because of defendant's insufficient equipment a number of worn-out cars no longer serviceable for interstate movements were acquired and fitted up by certain shippers for the transportation of their hay from local points on the Port Austin division of defendant's line to junction points with other lines, where the hay was transferred to empty system cars and moved forward to eastern markets; *Held*, that defendant's course in stopping its own cars as well as the cars in its control of connecting carriers, at such junction points, there to be loaded with hay from the "private" cars, instead of sending them up the line to the loading points where all the shippers might share in their distribution, was to the detriment and at the expense of the complainants and other independent dealers, and amounted to a denial to the complainants of the equal enjoyment of the facilities of defendant and was therefore an unlawful discrimination. *Ruttie et al. v. P. M. R. R. Co.* 179.

False floors for bananas. *Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co.* et al. 620.

CARLOAD MINIMUM.

Average on nitrate of soda. *Ft. Smith Traffic Bureau v. St. L. & S. F. R. R. Co.* et al. 651.

Shipments should be billed at actual weight. *Romona Oolitic Stone Co. v. C. I. & L. Ry. Co.* 569.

CAR MILEAGE.

Allowance equal to three-fourths of 1 cent for each mile traveled. *In re Demurrage on Privately Owned Tank Cars*, 378.

CAR RENTAL.

Carriers pay each other 50 cents per day. *Thompson Lumber Co. et al. v. Ill. Cent. R. R. Co.* et al. 657.

CAR REVENUE.

Often recognized as one of the safest criterions as to earnings. *Thompson Lumber Co. et al. v. Ill. Cent. R. R. Co. et al.* 657.

CAR SERVICE RULES.

Distribution of cars. *Ruttie et al. v. P. M. R. R. Co.* 179.

Observed by carriers and shippers. *Coomes & McGraw v. C., M. & St. P. Ry Co. et al.* 192.

Relative privileges of storage at St. Paul or Minneapolis and Duluth. *Commercial Club of Duluth v. Nor. Pac. Ry. Co. et al.* 288.

CAR SHORTAGE.

The occupation, the user, and the consequent reduction of the available equipment of the carrier are the vital matters in all plans of car distribution in times of shortage. *Royal Coal & Coke Co. v. So. Ry. Co.* 440.

Deficiency of equipment of defendant for four or five years. *Ruttie et al. v. P. M. R. R. Co. et al.* 179.

Distribution of importance only during periods of shortage. *Traer v. C. & A. R. R. Co. et al.* 451.

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England & Co. v. B. & O. R. R. Co. 614.

MacMurray et al. v. U. P. R. R. Co. 531.

Wagner, Zagelmeyer & Co. v. Det. & Mac. Ry. Co. et al. 160.

CARS OFF LINE.

By concurrence, carriers obligate themselves to furnish cars for through shipments. *Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al.* 1.

Carrier may send equipment from its line for the things that are essential for its own operation. *Traer v. C. & A. R. R. Co. et al.* 451.

Custom for carrier having long haul to supply cars for through shipments *Chicago & Milwaukee Electric R. R. v. Ill. Cent. R. R. Co. et al.* 20.

Usual for carriers to do what they can to keep control of their own equipment. *Ruttie et al. v. P. M. R. R. Co.* 179.

CARTAGE.

To coal yard not on line of carrier. *Leonard v. K. C. S. Ry. Co. et al.* 573.

CATTLE.

Rates on.

Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co. et al. 418.

Morti v. C., M. & St. P. Ry. Co. 513.

CEMENT.

Rates on. *Lincoln Commercial Club v. C., R. I. & P. Ry Co. et al.* 319.

CIRCUMSTANCES AND CONDITIONS.

The Commission views with disfavor the maintenance of a lower rate for a longer haul than for a shorter one included within the longer, and the circumstances and conditions obtaining at the more distant point which are relied upon to justify it must not only be clearly shown to be substantially dissimilar from those prevailing at the nearer point, but also to clearly exercise a potent or controlling influence in making the lower rate. *Bovalrd Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Dissimilar circumstances which justify under section 4 a greater charge for a shorter than for a longer haul will also prevent such rate from constituting an illegal preference or advantage under section 3. Id.

Under the circumstances and conditions shown to exist in this case the Commission is unable to find that the class rates now in effect for transportation of property from Chicago, St. Louis, Omaha, and Denver to El Paso, Tex., unduly prejudice Pecos, Tex., or that the lower rates from such points of origin to El Paso constitute a violation of the fourth section of the act as that section is construed by the courts. Complaint dismissed. *Pecos Mercantile Co. v. A., T. & S. F. Ry. Co. et al.* 173.

Consideration to be given location in territory having certain method of rate adjustment. *Railroad Commission of Kentucky v. L. & N. R. R. Co. et al.* 300.

Dissimilar at Ohio River crossings and Mississippi River common points. *Phillips-Trawick-James Co. et al. v. S. P. Co. et al.* 644.

Existing at time of complaint. *Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et al.* 605.

CLASSIFICATION OF FREIGHT.

The inclusion of wire coat hooks, packed in cases, when shipped in less than carload lots, in the third class in Official Classification territory is not shown to be unreasonable, and the complaint is dismissed. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 118.

The inclusion by carriers operating under the Western Classification of multigraphs, in cases in less than carloads, in double first class is unreasonable. Defendants ordered to classify such multigraphs as 1½ times first class. *Forest City Freight Bureau v. A., T. & S. F. Ry. Co. et al.* 295.

Beer and mineral water. *Milwaukee-Waukesha Brewing Co. v. C., M. & St. P. Ry. Co. et al.* 28.

Brick. *Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al.* 342.

Cannel coal. *Goff-Kirby Coal Co. v. B. & L. E. R. R. Co.* 383.

Differences in value or cost of service do not in all cases secure change in classification. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 109.

Motor cycles. *Merchants' Traffic Assn. v. A., T. & S. F. Ry. Co. et al.* 283.

Official classification, cotton piece and knit goods. *Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al.* 388.

Not scientific if founded on distinction with no transportation significance. *Fort Smith Traffic Bureau v. St. L. & S. F. R. R. Co. et al.* 651.

CLASS RATES.

Forest City Freight Bureau v. Ann Arbor R. R. Co. et al. 109, 118.

Wyman, Partridge & Co. et al. v. B. & M. R. R. Co. et al. 258.

Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al. 388.

COAL.

Clinch Valley field. *Raven Red Ash Coal Co. v. N. & W. Ry. Co.* 230.

Iowa rates. *Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al.* 319.

Mining and car distribution. *Powhatan Coal & Coke Co. v. N. & W. Ry. Co. et al.* 69.

Rates on lump and slack. *Gentry v. C., R. I. & P. Ry. Co. et al.* 214.

Reshipment at Kansas City. *Lanling-Harris Coal & Grain Co. et al. v. Mo. P. Ry. Co. et al.* 154.

Amarillo Gas Co. v. A., T. & S. F. Ry. Co. et al. 340.

Cardiff Coal Co. v. C., M. & St. P. Ry. Co. et al. 460.

Goff-Kirby Coal Co. et al. v. B. & L. E. R. R. Co. 383.

Haines v. C., R. I. & P. Ry. Co. et al. 214.

Lanling-Harris Coal & Grain Co. v. St. J. & G. I. Ry. Co. 317.

Nebraska State Railway Commission v. U. P. R. R. Co. 349.

COAT HOOKS.

Rates on. Forest City Freight Bureau v. Ann Arbor R. R. Co. et al. 118.

COKE.

Rates on. Amarillo Gas Co. v. A., T. & S. F. Ry. Co. et al. 240.

COKE OVENS.

As basis for car distribution. Powhatan Coal & Coke Co. v. N. & W. Ry. et al. 69.

COMBINATION RATES.

The rate on cotton piece goods from certain producing mills in the South near-by dye works and from the dye works to Chicago is less than the combination from the mill to the dye works of the complainant at Cincinnati and thence to Chicago. This is for the reason that the rate from southern mill to Chicago through Cincinnati is less than that to Cincinnati plus the local to Cincinnati, and this is due to the fact that the rate from southern mills to Chicago is competitive with that from New England; *Held*, That while the better combination in favor of the southern dye works may be a discrimination against works of the complainant, it is not, under all the circumstances, undue therefore unlawful. *Reliance Textile & Dye Works v. So. Ry. Co. et al.* 48.

Where a discrimination results from the combination of a State and an interstate rate, both established by the same carrier, the matter is not withdrawn from the jurisdiction of this Commission by the fact that the discrimination produced by an improper State rate—certainly not when the State rate is voluntarily made by the carrier. *Id.*

The practice of inserting obscure and general clauses in voluminous publications, to the effect that where a combination of locals, either general in specific instances, will make a lower aggregate through rate than the special joint through rate therein stated, the former will be used, has been found long experience to result in gross misapplication of the tariffs and in unjust discriminations. Under this practice the individual or concern whose business is large enough to warrant the employment of a traffic or rate expert will be able to secure combinations resulting in lower aggregate charges than can be secured by the smaller or occasional shipper who is unable to employ such an expert and who is required to pay the joint through rate appearing on the face of the tariff. It is self-evident that if such discriminations are to be broken up there can be but one lawful rate in effect at a given time on any commodity in one direction between two points. *Hydraulic Press Brick Co. v. St. L. & N. W. Ry. Co. et al.* 342.

The practice of making rates from or to an exclusive office by combination of the full local rates through some junction point seems to be objectionable, since there is no evidence in this case from which the effect of an order requiring the establishment of a through base rate and the application of the graduated scale to that rate can be determined, the Commission declines to interfere at this time with the present practice. *Kindel v. Adams Express Co. et al.* 475.

Complainant shipped 2 carloads of bran, milled in transit, from Salina, Kas. to Little Rock, Ark., over defendant's direct line through Coffeyville, and charged the published through rate, which is higher than an alleged combination of a rate on bran over defendant's line to Kansas City, Mo., plus a proportional rate from Kansas City to Little Rock; *Held*, That under defendant's tariffs there was no combination on Kansas City less than the through rate. *Marshall Michel Grain Co. v. Mo. Pac. Ry. Co.* 506.

The rate from Chester, which is a joint through rate established by the board Air Line and the Chesapeake & Ohio, should not, however, exceed the

from Richmond by the full amount of the local from Chester to Richmond.
Randolph Lumber Co. v. S. A. L. Ry. et al. 601.

Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al. 388.

Laning-Harris Coal & Grain Co. et al. v. Mo. Pac. Ry. Co. et al. 154.

Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

Payne-Gardner Co. v. L. & N. R. R. Co. 638.

Phillips-Trawick-James Co. et al. v. So. Pac. Co. et al. 644.

COMMODITY RATES.

Carriers making special efforts to meet requirements of special commodity permitted to maintain higher rates on general traffic. Topeka Banana Dealers' Assn. et al. v. St. L. & S. F. R. R. Co. et al. 620.

State commissions take into consideration in fixing rates on special commodities conditions incident to transportation within their respective States. Haines v. C., R. I. & P. Ry. Co. et al. 214.

COMMODITIES.

Bananas, New Orleans and Mobile to Kansas City, etc. 620.

Beer, Pueblo to Leadville, origin St. Louis, 329.

Beer, mixed C. L. with mineral water, 28.

Bran, Salina, Kans., to Little Rock—through route, 566.

Brick, Lincoln, Nebr., compared with Omaha, 319.

Brick, enameled, Cheltenham, Mo., to New Iberia, La. 342.

Brooms, wire, classification of, 109.

Brushes, wire, classification of, 109.

Cameras and cycles, St. Louis to Denver, 283.

Canned goods and dried fruit, Pacific coast to Nashville, 644.

Canned vegetables, Green Bay, Wis., to Washington, Ohio—misrouting, 286.

Cannel coal to be classified with bituminous, 383.

Cattle, delivery of, at Chicago stock yards, 418.

Cattle, Leon, Kans., to Chicago, 513.

Cement, Lincoln, Nebr., compared with Omaha, 319.

Coal, Arkansas and Indian Territory to Oklahoma points, 214.

Coal, Cardiff, Ill.—through routes, 460.

Coal, Clinch Valley to seaboard, 230.

Coal, Lincoln, Nebr., compared with Omaha, 319.

Coal, Marion, Ill., to Minneapolis, Minn.—demurrage, 571.

Coal, Springfield, Ill., to Leona, Kans. 317.

Coal, Springfield, Ill., to Salina and Klipp, Kans.—overcharge, 154.

Coal, Westport via Dodson and Kansas City—switching, 573.

Coal, Wyoming to points in Nebraska, 349.

Coal hooks, wire, in cases, L. C. L., classification of, 118.

Coke, C. L., Trinidad Dist. to Amarillo, Tex. 240.

Corn, milling-in-transit to Bangor and Lewiston, Me. 246.

Corn, snapped, Lavery, Okla., to Millican and Navasota, Tex. 46.

Cotton piece goods, New England to Denver, 225.

Cotton, seaboard to Wichita via Galveston, 388.

Cotton, southern mills to Chicago, 48.

Cotton seed points on Fort Smith and Western R. R. to Memphis, 1.

Cotton seed, Prague, Okla., to Warwick, Okla. 473.

Cotton seed, Oklahoma to Little Rock—through routes, 243.

Cream, Columbia, Tenn., to Jacksonville, Fla.—express, 536.

Cream and milk, St. Paul, Nebr., to Denver, 131.

Cross-ties, Barnett to McAlester, Ind. T. 366.

- Cross-ties, Illinois points from Nashville division of Southern Ry. and Nashville division of Illinois Central, 16.
- Cycles, St. Louis to Denver, 283.
- Dried fruit and canned goods, Pacific coast to Nashville, 644.
- Egg-case fillers, Lincoln compared with Omaha, 319.
- Farm machinery, Dallas to Kansas City—overcharge, 128.
- Fish, Haines City, Fla., to St. Louis—express rates, 510.
- Fruit, Michigan points to Chicago, 542.
- Fruit jars, glass, Greenfield, Ind., to Calico Rock, Ark. 293.
- Gleasonite, Dragon, Utah, to Mack, Colo. 190.
- Glass, Lincoln, Nebr., compared with Omaha, 319.
- Glass, fruit jars, Greenfield, Ind., to Calico Rock, Ark. 293.
- Glass, plate, import rates compared with domestic, 87.
- Grain and products, Buffalo to New England points, 31, 37, 38, 39, 40.
- Grain and products, St. Louis to Little Rock, reduced, 11.
- Hardwood lumber, eastern points to Pacific coast, 668.
- Hardwood lumber, Memphis to New Orleans, 657.
- Hay, Kansas City to Cape Girardeau through Kansas, 152.
- Iron ore, ground, Chicago to Pacific coast, 400.
- Iron pyrites, inland rate from Baltimore to Detroit, 357.
- Iron pyrites, inland rate from New York to Detroit, 363.
- Knit goods, seaboard to Wichita via Galveston, 388.
- Live hogs, Missouri River to Seattle, 501.
- Lumber, Boardman, N. C., to Schuylkill Haven and Pottsville, Pa. 521.
- Lumber, Chester, Va., to Columbus, Ohio, 601.
- Lumber, hardwood, eastern points to Pacific coast, 668.
- Lumber, hardwood, Memphis to New Orleans, 657.
- Lumber, lath, and shingles, Ashland, Tex., to Nash, Okla. 171.
- Lumber, Lincoln compared with Omaha, 319.
- Lumber, Missouri points to Kansas City—switching charges, 534.
- Lumber, walnut, Oklahoma City to Galveston for export, 42.
- Manure, Washington, D. C., to Glendale, Md. 526.
- Masurite, classification of, 405.
- Milk and cream, St. Paul, Nebr., to Denver, 131.
- Mineral water and beer in mixed carloads, 28.
- Motorcycles, St. Louis to Denver, 283.
- Multigraphs in cases, L. C. L., Western Classification, 295.
- Nitrate of soda, New Orleans to Fort Smith, 651.
- Oranges, St. Petersburg, Fla., to Atlanta, 529.
- Paving stone blocks, Lithonia, Ga., to Chicago, 401.
- Plate glass, import rates compared with domestic, 87.
- Potatoes, Wautoma, Wis., to Springfield, Mo.—misrouting, 167.
- Pulp wood to and paper from Rhinelander, Wis. 633.
- Rice, Lincoln compared with Omaha, 319.
- Rice and sugar, Texas and Louisiana to Anthony, Kans. 605.
- Rope, C. L., San Francisco to Independence, Kans. 56.
- Rye, storage and insurance at West Fairport, Ohio, 614.
- Salt, Lincoln compared with Omaha, 319.
- Shingles, Ashland, Tex., to Nash, Okla. 171.
- Stable manure, Washington to Glendale, Md. 526.
- Stone at ascertained weights, 115, 500.
- Sugar, Lincoln compared with Omaha, 319.
- Sugar, New Orleans to Gallatin, Tenn. 638.
- Ties, railroad, Barnett to McAlester, Ind. T. 366.

Ties, Illinois points from Nashville division of Southern Ry. and Illinois points from Nashville division of Illinois Central, 16.

Walnut lumber, Oklahoma City to Galveston for export, 43.

Water, mineral, in mixed C. L. with beer, 28.

Wire brushes and brooms, classification of, 109.

Wire coat hooks in cases, L. C. L., classification of, 118.

Wood, Missouri points to Kansas City—switching charges, 534.

COMMON ARRANGEMENT OR CONTROL.

Applies only to transportation partly by railroad and partly by water.

Leonard v. K. C. S. Ry. Co. et al. 573.

Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 329.

COMMON LAW.

Authority to administer remedies incidentally to common-law rights arise within the State at a time when the territorial status obtained must devolve upon the State courts. *Hussey v. C., R. I. & P. Ry. Co.* 366.

Establishment by connecting carriers of through routes and joint rates fundamentally a matter of contract. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co. et al.* 460.

In absence of agreement, carrier's liability governed by the ordinary common-law rule. In re Released Rates, 550.

Payment voluntarily made with full knowledge could not be recovered. *Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al.* 329.

COMPETITION.

The proviso in section 15 of the amended law limiting the power of the Commission to establish through routes and joint rates to cases where "no reasonable or satisfactory through route exists" was not intended to afford a means by which new lines, with the aid of the Commission, may profitably force their way into shipping districts built up and already well served by older lines, and thus seize and divide with the latter such traffic as may be offered for movement. The purpose of the clause was to afford relief to shipping communities and not to aid carriers to acquire strategic advantages in their contests with one another. *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co. et al.* 20.

A rate to one point that does not permit of disadvantageous competition from a point beyond enjoying a lower rate does not create unreasonable prejudice as to the one or give undue preference to the other. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Competition in commodities alone, at the nearer point, will not make the circumstances there substantially similar to those at the farther point where the other competitive influences and conditions also prevail. *Id.*

In considering the question of alleged unjust discrimination in favor of shippers of import plate glass moving from the ports of entry in this and adjacent foreign countries to Interior American destinations, and against domestic shipments between points in the United States, it is the duty of the Commission to look to the circumstances and conditions affecting the matters involved, not only in this country, but in the entire field of commerce, here and abroad. It is well settled by the highest judicial authority that the existence and effectiveness of competition between carriers, whether by rail or water, whether subject to the Federal act of regulation or not, and competition of markets, or the absence of such competition, are, among other things, pertinent to the question of similarity of circumstances and conditions, and as to whether the discrimination complained of and shown is or is not undue or unreasonable. *Pittsburg Plate Glass Co. v. P., C., & St. L. Ry. Co. et al.* 87.

As held in numerous decisions of the Supreme Court, it is neither require law nor just that the rates of a carrier on traffic subject to intense competition shall mark the limit or measure of its rates on traffic not subject to such competition. Being bound to consider the more intense competition to which transportation of the foreign product is subject as one of the "circumstances and conditions" affecting the relative adjustment of rates, the Commission not, solely upon the basis afforded by a comparison of the inland proportion the through rate from the foreign point of origin with the rate applying domestic shipments of plate glass in this country, condemn the latter as unreasonable or unjustly discriminatory. As rates applying on domestic shipments of plate glass between points in this country were challenged mainly on ground of unjust discrimination and not on account of their unreasonableness *per se*, and as there is no basis in the record of the case as presented for determination as to whether these rates are or are not just and reasonable themselves, the complaint is dismissed without prejudice. *Id.*

A carrier may in its own interest, if it so desires, carry for a longer distance over its own line than would be necessary if carried between the same points over the line of its competitor, in order to obtain a portion of the competitive business, upon terms that will afford some profit. It does not necessarily follow, however, that a carrier in competing for traffic in this way thereby subjects itself to an order compelling it to do so. *Hydraulic Press Brick Co. v. St. I. S. F. R. R. Co. et al.* 342.

Within certain limits express rates and freight rates compete, and to the extent express rates should be established with reference to freight rates. *Kindel v. Adams Express Co. et al.* 475.

Complainant finding that competitive manufacturing points in similar territory had rate adjustments which gave such points an advantage over complainant in nearly every available market, sought, at the hands of defendant, a rate adjustment that would permit it to enter Eastern markets. After a year of negotiation, rates were so adjusted and complainant changed its terms, methods, etc., at considerable expense in order to manufacture for market so opened to it. *New Albany Furniture Co. v. M. J. & K. C. R. R. Co. et al.* 594.

Coal markets of central West. *Cardiff Coal Co. v. C., M. & St. P. R. R. Co. et al.* 460.

Conditions at St. Louis and Kansas City. *The Traffic Bureau, etc., of St. Louis v. Mo. Pac. Ry. Co. et al.* 11.

Grain at Kansas City. *Miller Walnut Co. v. A., T. & S. F. Ry. Co. et al.*

Hardwood lumber at Pacific coast. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Intermediate points. *Bovalrd Supply Co. v. A., T. & S. F. Ry. Co. et al.*

Jobbing goods, Missouri River territory and to Pacific coast. *Wyman, Fridge & Co. v. B. & M. R. R. Co. et al.* 258.

Longer distance point. *Railroad Commission of Kentucky v. L. & N. R. Co. et al.* 300.

Making dissimilar conditions. *Randolph Lumber Co. v. S. A. L. Ry. et al.* 6

Milling spring wheat. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 31

Other carriers at longer distance points may justify lower rates. *Pe Mercantile Co. v. A., T. & S. F. Ry. Co. et al.* 173.

Sugar from New Orleans to Louisville controlled by St. Louis and sugar producing points on the Atlantic seaboard. *Payne-Gardner Co. v. L. & N. R. Co.* 638.

Under milling in transit rates. *Quimby et al. v. Maine Cent. R. R. Co. et al.* 246.

Universally considered by railways in the rates which they make. *Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al.* 888.

Via old and new lines from southern points of production and through Gulf ports. *Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et al.* 605.

COMPRESS, COTTON.

Complainants, owning cotton compresses at Ardmore and Pauls Valley, Okla., respectively, allege that the practice of defendants whereby cotton originating at points north of Ardmore and Pauls Valley is carried by those points to Gainesville, Tex., for compression, while cotton originating at points south of Gainesville is not permitted to be carried north through Gainesville to Ardmore and Pauls Valley for compression, results in unjust discrimination against complainants; and ask that this Commission establish a rule requiring defendants to have all cotton compressed by the compress nearest the point of origin. *Chickasaw Compress Co. v. G., C. & S. F. Ry. Co. et al.* 187.

CONCESSIONS.

Complaint is made of a general special rate of \$2 on milk and cream from St. Paul, Nebr., to Denver, Colo., lawfully in force only because of inadvertent omission of defendant to file its mileage scale of milk and cream rates under which the lawful rate between these points would have been 58 cents. After this complaint was brought defendant filed on short notice mileage tariff naming the 58-cent rate. This being satisfactory to the parties it was stipulated on the hearing that the complaint might be dismissed. In making the stipulation effective the Commission orders the maintenance of the 58-cent rate for a period of not less than two years, but holds the case under further advisement for purposes stated in the opinion. *Merchants' Traffic Assn. v. Pacific Express Co.* 181.

Defendant, having satisfied the claim and changed the rate complained of, is ordered to keep present rate on snapped corn in effect for two years. *Ocheltree Grain Co. v. C., R. I. & P. Ry. Co.* 238.

Reparation, in the case of a through shipment upon which the rate charged was made up of a joint rate to the gateway plus the local rate of the delivering carrier, which local rate alone is alleged to be unreasonable, will be awarded where the delivering carrier, within a reasonable time after the shipment moved, put in effect a rate conceded by the complainant to be reasonable and stipulated that an order of reparation be directed against it alone. *American Grocer Co. v. P., C., C. & St. L. Ry. Co. et al.* 293.

The complaint having been satisfied by the restoration of the rate previously in force and the withdrawal of the rate complained of by tariff duly filed, is, on application of complainants, dismissed. *Bunch Co. et al. v. C., R. I. & P. Ry. Co. et al.* 377.

By defendant at hearing. *Winter's Metallic Paint Co. v. A., T. & S. F. Ry. Co. et al.* 409.

Division of joint rates. *La Salle & Bureau County R. R. Co. v. C. & N. W. Ry. Co.* 610.

Passenger facilities. *Lewis et al. v. C., R. I. & P. Ry. Co.* 138.

Rates on bicycles. *Merchants' traffic Asso. v. A., T. & S. F. Ry. Co. et al.* 283.

Rates on pyrites.

Detroit Chemical Works v. Nor. Cent. Ry. Co. et al. 357.

Detroit Chemical Works v. Erie R. R. Co. et al. 363.

Rates on stable manure. *White Water Farms Co. v. P. B. & W. R. R. Co.* 526.

Rates on wood pulp. *Rhineland Paper Co. v. N. P. Ry. Co. et al.* 633.

Refrigeration rates. *Fain & Stamps v. A. C. L. R. R. Co. et al.* 529.

Restoration of old rate.

Ocheltree Grain Co. v. St. L. & S. F. R. R. Co. 46.

North Bros. v. St. L. & S. F. R. R. Co. 152.

Subsequent to hearing, in cream rates. *Reynolds v. Southern Express* 536.

CONDITIONAL RATES.

If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value, (a) the stipulation is valid when it occurs through causes beyond the carrier's control; (b) the stipulation is valid even when loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith; (c) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value; (d) the stipulation is void as against loss due to the carrier's negligence or other misconduct of the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount. In re Released Rates, 5

CONGRESS.

Conditions of right of way granted in Territories. *Haines v. C. & R. I. & Ry. Co. et al.* 214.

Never intended to authorize postponement of effective date of Hours of Service law. Re Extension of Hours of Service law, 140.

Power of, to regulate commerce. *Leonard v. K. C. S. Ry. Co. et al.* 573.

Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 329.

CONNECTING LINES.

A rail carrier may control, or connect with, a line of steamships engaged in foreign commerce, with which it may interchange business as freely as with another rail carrier, and it may quote a combined rate for the through movement, the agent of the railroad company acting as the agent of the steamship company in so doing. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.* 266.

Fraudulent practices against connections in billing. Re Rates, Practices, et al. of Carriers Subject to Act, 212.

Relations to, in the handling of through freight. *Baer Bros. Mercantile Co. v. Mo. P. Ry. Co. et al.* 329.

CONTRACT.

The carrier must be free to contract for the total output of a mine, if so desired; or it may contract for any part thereof less than the whole; and is entitled to get its fuel first. If, however, a mine contracts to furnish only part of its output to the carrier for fuel, and if the filling of its contract with the carrier calls for its full pro rata of cars, or more, then it should receive other cars for commercial shipments. If such a mine in filling its contract to supply fuel coal does not exhaust its equitable pro rata of cars, then it should be given it for commercial shipments sufficient to complete its full pro rata share of all available cars. *Royal Coal & Coke Co. v. Southern Ry.* 440.

Carriers. *Rhineland Paper Co. v. N. Pac. Ry. Co. et al.* 633.

Carriers' right to contract for fuel. *Traer v. C. & A. R. R. Co. et al.* 451.

Coal producer's contract. *Powhatan Coal & Coke Co. v. N. & W. Ry. Co.* et al. 69.

Common-law right of carriers to contract freely not assumed to be taken away by the act. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.* et al. 266.

Express companies may be inquired into. *Kindel v. Adams Express Co.* et al. 475.

Shippers as to carriage of grain. *England & Co. v. B. & O. R. R. Co.* 614.

Shipper as to liability. In the *Matter of Released Rates*, 550.

To locate and maintain station. *Eddleman et al. v. Mid. Val. R. R. Co.* 103.

CORN.

Previous to December 12, 1906, defendant's rate on snapped corn from Laverly, Okla., to Millican, Tex., and from Laverly, Okla., to Navasota, Tex., had been for a long time 29 cents per 100 pounds, but by tariff effective upon that date the rate was advanced to 36½ cents per 100 pounds. This advanced rate was continued in effect until February 17, 1907, when it was reduced to the former rate, where it stands to-day. Upon that statement we must hold that the rate charged complainant was excessive. The fact that the defendant had for some time maintained a rate of 29 cents and has since reduced its rate to the same figure is in the nature of an admission upon its part that this rate is a fair one, unless explained. Reparation allowed. *Ocheltree Grain Co. v. St. L. & S. F. R. R. Co.* 46.

Meal under milling-in-transit arrangement. *Quimby et al. v. Maine Central R. R. Co.* et al. 246.

Moves greater part of year. *Memphis Freight Bureau v. Ft. S. & W. R. R. Co.* et al. 1.

C. I. F. (COST, INSURANCE, AND FREIGHT.)

Lykes Steamship Line v. Commercial Union et al. 310.

COST OF MINING COAL.

Raven Red Ash Coal Co. et al. v. N. & W. Ry. Co. 230.

Goff-Kirby Coal Co. v. B. & L. E. R. R. Co. 383.

COST OF PRODUCTION.

Of multigraphs. *Forest City Freight Bureau v. A., T. & S. F. Ry. Co.* et al. 205.

R. R. Com. Ky. v. L. & N. R. R. Co. et al. 300.

COST OF ROAD.

American Asphalt Asso. v. Uintah Ry. Co. 196.

Cattle Raisers' Asso. of Texas v. M. K. & T. Ry. Co. et al. 418.

COST OF SERVICE.

Buffalo to Atlantic ports. *Washburn-Crosby Co. v. Pa. R. R. Co.* 40.

Cotton piece goods to Wichita. *Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co.* et al. 388.

Decreases in proportion to volume. *Railroad Commission of Kentucky v. L. & N. R. R. Co.* et al. 300.

Decreases with increased capacity of equipment. *Thompson Lumber Co. et al. v. I. C. R. R. Co.* et al. 657.

Determining rate. *American Asphalt Asso. v. Uintah Ry. Co.* 196.

Express business. *Kindel v. Adams Express Co.* et al. 475.

Express charges. *Reynolds v. Southern Express Co.* 536.

Furniture. Advances in rates beyond, condemned.

New Albany Furniture Co. v. M. J. & K. C. R. R. Co. et al. 594.

Hardwood west compared with soft wood east. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Joint compared with local rates. *Randolph Lumber Co. v. S. A. L. et al.* 601.

Lumber to Galveston. *Miller Walnut Co. v. A., T. & S. F. Ry. Co. et al.* 45

Rate on cotton piece goods. *Merchants' Traffic Asso. v. N. Y., N. H. & R. R. Co. et al.* 225.

Relative, Chicago and St. Louis. *Wyman, Partridge & Co. v. B. & M. R. Co. et al.* 258.

Transportation of bananas. *Topeka Banana Dealers' Asso. v. St. L. & F. R. R. Co. et al.* 620

Transportation of cannel coal. *Goff-Kirby Coal Co. v. B. & L. E. R. Co.* 383.

Transportation of cattle. *Cattle Raisers' Asso. of Texas v. M. K. & T. Co. et al.* 418.

Transportation of coal. *Raven Red Ash Coal Co. et al. v. N. & W. Co.* 230.

Transportation of explosives. *Masurite Explosive Co. v. P. & L. E. R. R. et al.* 405.

COTTON.

Carload values compared with lumber. *Thompson Lumber Co. et al. v. I. R. R. Co. et al.* 657.

Commission can not order compression at nearest compress. *Chickasaw Compress Co. et al. v. G., C. & S. F. Ry. Co. et al.* 187.

Originally all spun in the north. *Reliance Textile & Dye Works v. South Ry. Co. et al.* 48.

COTTON GOODS.

Complaint alleges that the all-rail rate on cotton piece goods from New England points to Denver, Colo., of \$1.79 per 100 pounds, in any quantity, unreasonable, and prays that Denver be accorded a carload rate on such cotton fabrics; *Held*, upon consideration of the testimony and argument, that application for a carload rating be denied, but that the \$1.79 rate is excessive and should not exceed \$1.50. As no order can properly be made upon the record, complaint dismissed. *Merchants' Traffic Asso. v. N. Y., N. H. & R. R. Co. et al.* 225.

Rates on cotton piece goods from Atlantic seaboard territory to Wichita, Kans., via Galveston, Tex., should not exceed \$1.25 per 100 pounds. This recognizes a differential of 32 cents against Wichita, which under normal conditions and upon the present basis of rates ought not to be exceeded. *Johns & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al.* 388.

Compared with lumber. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Practically none manufactured in western section. *Chickasaw Compress et al. v. G., C. & S. F. Ry. Co. et al.* 187.

Rates on, from southern mills to Chicago via dye works. *Reliance Textile & Dye Works v. Southern Ry. Co. et al.* 48.

COTTON MOVEMENT.

The movement of cotton from points in Texas northwardly for compression at Ardmore and Pauls Valley from as far south of Gainesville as cotton can be moved to Gainesville from points north of Ardmore and Pauls Valley would not be affected unless the rates from such points of origin should be protected, irrespective of whether or not a higher rate is in effect from the coast.

press point, and to require this would be to entirely disregard the back haul and the added expense incident thereto. The movement of cotton is almost entirely southward from all points located on defendants' lines, and cotton originating at points north of Ardmore and Pauls Valley naturally moves through Gainesville when transported by defendants. To require the defendants to haul cotton northwardly through Gainesville for compression at Ardmore and Pauls Valley, and to protect on such shipments rates not higher than those in effect from points of origin to ultimate destination, where such cotton must be ultimately hauled back through Gainesville to southern ports, would not be justified upon the record. *Held*, under the circumstances and conditions shown to exist in these cases, that the discrimination complained of is not undue. Complaints dismissed. *Chickasaw Compress Co. v. G., C. & S. F. Ry. Co. et al.* 187.

COTTON SEED.

Rates on.

Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al. 1.

Merchants' Freight Bureau of Little Rock v. Midland Valley R. R. Co. et al. 243.

Chandler Cotton Oil Co. v. Ft. S. & W. R. R. Co. 473.

CREAM.

Rates on. *Reynolds v. Southern Express Co.* 536

Merchants' Traffic Asso. v. Pacific Express Co. 181.

CRIMINAL PROSECUTIONS.

Practices of certain carriers and certain shippers relative to interstate shipments declared to be illegal, and criminal prosecutions requested to be instituted. In re Rates, Practices, etc., of Carriers subject to Act. 212.

CROSS-TIES.

Reparation asked on account of alleged unreasonable freight rates charged on shipments of cross-ties moving between April 25 and August 12, 1907, from Barnett to McAlester, Ind. T. Subsequent to the movement of these shipments and the filing of the petition herein this territory was admitted as a State into the Union and the points of origin and destination are now located in the State of Oklahoma. By the act of Congress admitting Oklahoma to statehood the intraterritorial jurisdiction of the Commission ceased to apply to territory now embraced in that State. The Commission can make no lawful order in any case of which it has no jurisdiction under the provisions of the act to regulate commerce. Complaint dismissed for want of jurisdiction. *Hussey v. C., R. I. & P. Ry. Co.* 366.

Rates on. *Holcomb-Hayes Co. v. I. C. R. R. Co. et al.* 16.

CUBA.

Adjacent foreign country means in the sense of possibility of continuity of rails. *Lykes S. S. Line v. Commercial Union et al.* 310.

DAMAGES.

The money damages alleged by the complainants, the Tennessee Coal Company and the Minersville Coal Company, were not proven with sufficient certainty to warrant the Commission in making any award, even if it had jurisdiction in such cases. *Royal Coal & Coke Co. v. Southern Ry. Co.* 440.

If complainants had a contract with defendant to locate and maintain its station at Elder, they may perhaps maintain a suit at law for breach of that

contract; but this Commission has no power to award damages for failure to perform such a contract. *Eddleman et al. v. Mid. Val. R. R. Co.* 108.

Difficulty of tracing out exact commercial effect of freight rate. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Forfeited by laches of complainant. *Thompson Lumber Co. et al. v. I. C. R. R. Co.* et al. 657.

Injuries to business. *Frye & Bruhn et al. v. N. Pac. Ry. Co. et al.* 501.

Measure of, the difference between rate to which complainants were entitled and which they were compelled to pay. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

No jurisdiction over claims for damage to goods in transit. *In re Release Rates.* 550.

On live stock, ratio to earnings. *Cattle Raisers' Assn. of Texas v. M. K. & T. Ry. Co. et al.* 418.

On past shipments only by reduction of rate. *Hussey v. C., R. I. & P. Ry. Co.* 366.

Under section 16, order must direct the sum awarded "to the complainant." *Missouri & Kansas Shippers' Assn. v. A. T. & S. F. Ry. Co. et al.* 411.

Wire brushes and brooms immune in transit. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 100.

DELAY.

Complainant shipped over defendants' lines from Elk City, Okla., seven car loads of broom corn to Sioux City, Iowa, via Omaha, paying 60.85 cents per 10 pounds on one car, 80.5 cents per 100 pounds on another car, and on the remaining five cars \$1.14 per 100 pounds. The combination of local rates on this commodity from Elk City to Sioux City, based on Omaha, is 60.85 cents per 10 pounds, whereas the joint through rate was at the time of the shipments \$1.14 but subsequently defendants voluntarily established a joint through rate of 60.8 cents. Pending protest against paying the \$1.14 rate on two of these cars, unloading was delayed, causing demurrage charge, which was paid by complainant. *Coomes & McGraw v. C., M. & St. P. Ry. Co. et al.* 192.

At wharf in handling fruit. *Benton Transit Co. v. B. H.-St. J. Ry. & L. Co.* 542.

Of lumber cars at New Orleans for export. *Thompson Lumber Co. et al. v. I. C. R. R. Co. et al.* 657.

DELIVERY.

In one part of Kansas City not a delivery in another. *Leonard v. K. C. & T. Ry. Co. et al.* 573.

Previous to June, 1894, of live stock at Chicago included in rates. *Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co. et al.* 418.

Refused in advance of payment of demurrage. *MacBride Coal & Coke Co. v. C., St. P., M. & O. Ry. Co.* 571.

DEMURRAGE.

Private cars owned by shippers and hired to carriers upon a mileage basis are subject to demurrage when such cars stand upon the tracks of the carrier either at point of origin or point of destination, but are not so subject when upon either the private track of the owner of the car or the private track of the consignee. The carrier must charge demurrage in all cases where such demurrage is imposed by tariff provision upon its own equipment, except when a privately owned car is upon a privately owned siding or track, and the carrier is paying, or is responsible for, no rental or other charge upon such car. A privately owned car, in the sense in which that expression is here used, is a

car owned and used by an individual, firm, or corporation for the transportation of the commodities which they produce or in which they deal. In re Demurrage on Privately Owned Tank Cars. 378.

Kansas City on coal. *Leonard v. K. C. S. Ry. Co. et al.* 573.

Lumber at New Orleans. *Thompson Lumber Co. et al. v. I. C. R. R. Co. et al.* 657.

One dollar per day not found unreasonable. *MacBride Coal & Coke Co. v. C., St. P., M. & O. Ry. Co.* 571.

Pending protest, demurrage paid by complainant. *Coomes & McGraw v. C., M. & St. P. Ry. Co. et al.* 192.

DENSITY OF TRAFFIC.

Complaint questions reasonableness of rates between Owensboro and Henderson, Ky., and points in Trunk Line and Central Freight Association territories; it also alleges that such rates result in unjust discrimination against Owensboro and Henderson and give undue preference to Evansville, Ind. The carriers most directly interested in the Evansville rates for the most part serve the territory north of the Ohio River, while those most directly interested in the rates to Owensboro and Henderson serve the territory south of the river. There is greater density of population and of traffic in the territory north of the Ohio River known as Central Freight Association territory, in which Evansville is situated, than in territory south of the river, in which Owensboro and Henderson are situated. The general adjustment of rates throughout Central Freight Association territory due to the conditions therein prevailing naturally has a forceful effect upon the Evansville rates. The larger volume of traffic and greater number of carriers operating in that territory create a greater degree of competition, and the rates generally have been adjusted with a view to meeting the conditions resulting therefrom. *Railroad Commission of Kentucky v. L. & N. R. R. Co. et al.* 300.

Traffic in western express business. *Kindel v. Adams Express Co. et al.* 475.

DEVICE.

Rebates by giving large car and assessing charge on small one. *Frye & Bruhn et al. v. Nor. Pac. Ry. Co. et al.* 501.

DIFFERENTIALS.

Complainant insisted that the differential of 2 cents per 100 pounds upon grain and grain products to New England points in favor of New York was excessive; *Held*, Following *Boston Chamber of Commerce v. Lake Shore & Michigan Southern Ry. Co.*, 1 I. C. C. Rep., 436; *Toledo Produce Exchange v. Lake Shore & Michigan Southern Ry. Co.*, 5 I. C. C. Rep., 166, that upon the record the Commission would not disturb this differential. *Banner Milling Co. v. N. Y. C. & H. R. R. Co.* 31.

Rates on grain and grain products for domestic consumption from Buffalo to Philadelphia and Baltimore are one-half cent per 100 pounds lower than to New York, but from Chicago to Philadelphia and Baltimore such rates are 2 cents and 3 cents per 100 pounds, respectively, lower than to New York; *Held*, Upon application for the same differentials from Buffalo as from Chicago to Philadelphia and Baltimore, that Buffalo is not entitled to these differentials. The failure of Buffalo to obtain these differentials is due to its location—a disadvantage which defendant has never attempted to equalize in the past and which, in the opinion of the Commission, defendant ought not to be required to equalize now. *Washburn-Crosby Co. v. Pa. R. R. Co.* 40.

The present rate upon knit goods from Atlantic seaboard territory to Wichita via Galveston of \$1.64½, producing a differential against Wichita of 26½ cents, is

not unjust or unreasonable. *Johnston & Larimer Dry Goods Co. et al. v. A. & S. F. Ry. Co. et al.* 388.

The facts appearing in this case indicate that the differential of 6 cents 100 pounds in carloads on rice and sugar from points in Texas and Louisiana against Anthony, Kans., as compared with Wichita, Hutchinson, Winfield, & Arkansas City, Kans., is not just and should not exceed 3 cents; and that rates on other commodities and the class rates should be adjusted on approximately the same relative basis. *Anthony Wholesale Grocery Co. v. A. & S. F. Ry. Co. et al.* 605.

Between New Albany and North Carolina points on traffic to New England. *New Albany Furniture Co. v. M., J. & K. C. R. R. Co. et al.* 504.

Coal from Clinch Valley above Pocahontas. *Raven Red Ash Coal Co. et v. N. & W. Ry. Co.* 230.

Coal to various groups from Illinois mines. *Cardiff Coal Co. v. C., M. & P. Ry. Co. et al.* 460.

Grain in western territory. *Traffic Bureau, etc., of St. L. v. Mo. Pac. Ry. et al.* 11.

Rhineland above Fox River rate. *Rhineland Paper Co. v. N. Pac. Ry. Co. et al.* 633.

St. Louis to Omaha and Lincoln. *Lincoln Commercial Club v. C. R. I. & Ry. Co. et al.* 319.

DISCRETION.

The Commission has no authority under the act to regulate commerce require carriers to establish special fares, based upon less than the normal passenger-mile revenue, for the use of passengers on particular occasions or special purposes. On that ground, and also on the ground that the legal right of carriers to issue party-rate tickets and confine their use to theatrical companies has been fully considered by the Commission, this complaint for an order quiring the defendants to reestablish such party rates is dismissed on motion of the Commission. *Fleld v. So. Ry. Co. et al.* 298.

Carrier in its own interest to carry via longer line if it desires.

Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al. 342.

Vested in Commission. In re Extension of Hours of Service Law 140.

In general as to through routes.

Merchants' Freight Bureau of Little Rock, Ark., v. Mid. Val. R. R. Co. et al. 243.

Cedar Rapids & Iowa City Ry. & L. Co. v. C. & N. W. Ry. Co. 250.

DISCRIMINATIONS.

Discriminations of the nature referred to in sections 3 and 4 of the act, in far as they result from the bona fide action of a carrier in meeting circumstances and conditions not of its own creation, and which are reasonably necessary for that purpose, do not of necessity fall under the condemnation of the law. *Pittsburg Plate Glass Co. v. P. C. C. & St. L. Ry. Co. et al.* 87.

Resulting from use of a State rate, not withdrawn from jurisdiction of Commission. *Reliance Textile & Dye Works v. So. Ry. Co. et al.* 48.

ARTICLES.

Coke as compared with coal, *Trinidad, Colo., to Amarillo, Tex.* 240.

Plate glass, domestic, as compared with the imported from seaports to interior. 87.

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FACILITIES.

- Cars for coal. 440.
- Cars for coal at mines. 451.
- Cars for coal in Pocahontas Flat Top District. 69.
- Cars for grain at Wood River, Nebr. 531.
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- Car distribution for coal in Pocahontas Flat Top District. 69.
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- Dye works at Cincinnati compared with southern dye works in transit rates from southern mills to Chicago. 48.
- Free storage at Duluth against local merchants. 288.
- Merchants, etc., at Little Rock, Ark., in favor of others at Fort Smith, Ark., and Muskogee, Ind. T., by lack of through routes. 243.
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PLACES.

- Anthony compared with other Kansas points on rice and sugar from the South. Anthony Wholesale Grocery Co. v. A. T. & S. F. Ry. Co. et al. 605.
- Chester, Va., compared with Richmond on lumber to Ohio. Randolph Lumber Co. v. S. A. L. Ry. et al. 601.
- Clinch Valley coal compared with Pocahontas to seaboard. Raven Red Ash Coal Co. et al. v. N. & W. Ry. Co. 230.
- Denver, in the matter of express rates. Kindel v. Adams Express Co. et al. 475.
- Detroit, in rate from Baltimore on iron pyrites. Detroit Chemical Works v. Nor. Cent. Ry. Co. et al. 357.
- Detroit, in rate from New York on iron pyrites. Detroit Chemical Works v. Erie R. R. Co. et al. 363.
- Fort Smith & Western R. R. cotton seed from points on, to Memphis, Tenn. Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al. 1.
- Gallatin compared with Nashville, etc., sugar from New Orleans. Payne-Gardner Co. v. L. & N. R. R. Co. 638.
- Independence, Kans., rope, C. L., to, compared with rates from San Francisco to Missouri River and Chicago common points. Bovaird Supply Co. v. A. T. & S. F. Ry. Co. et al. 56.
- Little Rock, grain to, from St. Louis, compared with rates from Kansas City. Traffic Bureau, etc., of St. Louis v. Mo. Pac. Ry. Co. et al. 11.
- Lincoln, Nebr., in favor of Omaha, from points west of Mississippi, south of St. Louis, or Missouri, north of St. Louis. Lincoln Commercial Club v. C. & N. W. Ry. Co. et al. 319.
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- New Albany, Miss., in furniture rates. New Albany Furniture Co. v. M. J. & K. C. R. R. Co. et al. 594.
- New England points in favor of New York on grain and products from Buffalo. Banner Milling Co. v. N. Y. C. & H. R. R. R. Co. 31.

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Rhineland, Wis., rates on paper, etc., compared with Fox River dist Rhineland Paper Co. v. Nor. Pac. Ry. Co. et al. 633.

Wichita in favor of Kansas City; cotton goods. Johnston & Larimer Goods Co. et al. v. A., T. & S. F. Ry. Co. et al. 388.

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As affecting rates.

Traffic Bureau, etc., of St. L. v. Mo. Pac. Ry. Co. et al. 11.

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Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et al. 605.

Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al. 620.

Payne-Gardner Co. v. L. & N. R. R. Co. 638.

DIVERSION.

Allowed at Duluth or Superior without charge. Commercial Club of luth v. Nor. Pac. Ry. Co. et al. 288.

Bananas in transit. Topeka Banana Dealers' Asso. et al. v. St. L. & S R. R. Co. et al. 620.

DIVISIONS OF RATES.

Defendants were unable to agree upon satisfactory divisions of the r so established, and on that account as well as because of threatened reduc of rates from competitive points, increased the rates from complainant's tory one year after they were established. New Albany Furniture Co. v. A & K. C. R. R. Co. et al. 594.

Gentry v. A., T. & S. F. Ry. Co. et al. 171.

Merchants' Traffic Asso. v. N. Y., N. H. & H. R. R. Co. et al. 225.

Johnston & Larimer Dry Goods Co. v. A., T. & S. F. Ry. Co. et al. 388.

Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al. 418.

Randolph Lumber Co. v. S. A. L. Ry. et al. 601.

Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al. 620.

DOCK FACILITIES.

Commercial Club of Duluth v. Nor. Pac. Ry. Co. et al. 288.

Benton Transit Co. v. B. H.-St. J. Ry. & L. Co. 542.

Thompson Lumber Co. et al. v. Ill. Cent. R. R. Co. et al. 657.

DOUBLE-DECK CARS.

Rates on. Frye & Bruhn et al. v. N. Pac. Ry. Co. et al. 501.

DRAYAGE.

On fruit. Benton Transit Co. v. B. H.-St. J. Ry. & L. Co. 542.

DYNAMITE.

Masurite, which is a high explosive, but not dangerous to handle, should be accorded a lower rate than dynamite, the handling of which is attended with great danger. *Masurite Explosive Co. v. P. & L. E. R. Co. et al.* 405.

EARNINGS.

Basis for fixing rates. *Railroad Commission of Kentucky v. L. & N. R. R. Co. et al.* 300.

Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al. 418.

Kindel v. Adams Express Co. et al. 475.

Diminished as reason for extension. *In re Extension of Hours of Service Law*, 140.

Ratio of operating expenses and taxes of defendant. *Raven Red Ash Coal Co. v. N. & W. Ry. Co.* 230.

Utah Railway Co. American Asphalt Asso. v. Utah Ry. Co. 190.

ELECTRIC ROAD.

The act makes no distinction between railroads that are operated by electricity and those that use steam locomotives; both are subject to the act when engaged in interstate transportation and are entitled to equal consideration in any controversy before the Commission. *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co. et al.* 20.

Cedar Rapids & Iowa City Ry. & L. Co. v. C. & N. W. Ry. Co. et al. 250.

Leonard v. K. C. Ry. Co. et al. 573.

ELEVATORS.

Traffic Bureau, Merchants' Exchange of St. Louis v. Mo. Pac. Ry. Co. et al. 11.

Re Allowances to Elevators by the U. P. R. R. Co. 498.

EMERGENCY RATES.

Coal from Missouri River to West, to relieve famine, 1906-7. *Nebraska State Railway Commission v. U. P. R. R. Co.* 349.

EMPTY CARS.

As a reason for a higher rate. *Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al.* 620.

Burgess et al. v. Transcontinental Freight Bureau et al. 668.

As a reason for low rate. *Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al.* 87.

EMPTY PACKAGES.

Defendant's rate on cream of \$3.90 per 10 gallons from Columbia, Tenn., to Jacksonville, Fla., held to be unreasonable, and a reasonable and just rate therefor not exceeding \$2.75 for the movement of the cream and the return movement of the empties prescribed. *Reynolds v. Southern Express Co.* 536.

ENAMELED BRICK.

Defendant's rate of 48 cents per 100 pounds for the transportation of enameled brick from Cheltenham, Mo., to New Iberia, La., is under the circumstances unjust and unreasonable and should not exceed 30 cents per 100 pounds for the future. Reparation awarded. *Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al.* 342.

ENGLISH POST.

The fact that under the postal regulations of England a package can be sent from London to Denver for 50 cents is no reason for pronouncing an express

rate of 70 cents upon a package of the same size reasonable. *Kindel v. Adams Express Co. et al.* 475.

EQUIPMENT.

A carrier's first and paramount duty to the shipper is to have its entire equipment do its utmost in serving the shipper. A carrier serving and dependent upon a new and undeveloped market to earn any profit for its owners, may charge higher rates under different conditions, and if a carrier that proposes to require the transfer of freight from one junction point to another it must specify in the tariff the point made and the charge therefor. *Memphis Freight B Co. et al.* 1.

Cars worn-out fitted up by shippers for hay. *Ill. Co.* 179.

Detroit & Mackinac Ry. Co. *Wagner, Zugelmeyer Co. et al.* 160.

Electric road. *Chicago & Milwaukee Elec. R. R. Co. v. Cedar Rapids & Iowa City Ry. & L. Co. v. C. & N. W. Ry. Co. et al.* 451.

Shortage. *England & Co. v. B. & O. R. R. Co.* 61
Utah Ry. Co. v. American Asphalt Assn. v. Uinta
 Unless carriers furnish, shippers must. *In re Denver Tank Cars* 378.

ESTIMATED WEIGHT.

Georgia Rough & Cut Stone Co. v. Ga. R. R. Co. et al.
Hydraulic Press Brick Co. v. St. L. & S. F. R. R.
Romona Oolitic Stone Co. v. C. I. & L. Ry. Co. 561
Romona Oolitic Stone Co. v. Vandalia R. R. Co. 1

ESTOPPEL.

Protection of carrier against frauds and misrepresentation. *Released Rates* 550.

EVIDENCE.

The difference in the character of testimony required in an entire schedule of rates covering the whole country and that required to test the reasonableness of a rate for a commodity between two definite points considered. *Bruhn et al. v. N. Pac. Ry. Co. et al.* 501.

EXCURSION RATES.

Koch Secret Service v. L. & N. R. R. Co. 523.

EX LAKE GRAIN.

Banner Milling Co. v. N. Y. C. & H. R. R. Co. 31.
England & Co. v. B. & O. R. R. Co. 614.

EX LAKE RATES.

No order will be made in this case pending leave to put in a proportional rate on ex-lake grain, without discrimination. *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*
Thornton & Chester Milling Co. v. D. L. & W. R. R.

Washburn-Crosby Co. v. Erie R. R. Co. et al. 38.

Washburn-Crosby Co. v. L. V. R. R. Co. 39.

Washburn-Crosby Co. v. Pa. R. R. Co. 40.

EXPLOSIVES.

Rates on. Masurite Explosive Co. v. P. & L. E. R. R. Co. et al. 405.

EXPORT.

Lumber. Miller Walnut Co. v. A. T. & S. F. Ry. Co. et al. 43.

Thompson Lumber Co. et al. v. I. C. R. R. Co. et al. 657.

EXPRESS RATES.

The main object of an express service is expedition, and express rates should not be so low as to attract business which might properly go by freight and thereby congest and interfere with the service by express. *Kindel v. Adams Express Co. et al.* 475.

The law requires that the several classes of common carriers subject to its provisions shall fix just and reasonable charges for transportation services, and the authority of the Commission to prescribe a reasonable rate when invoked in a proper case is not restricted by the terms of any agreement between an express company and a railroad company. *Reynolds v. Southern Express Co.* 536.

The law places the same obligation upon the shipper as upon the carrier to observe its legal tariff provisions. *Bannon v. Southern Express Co.* 516.

Milk and cream. Merchants' Traffic Asso. v. Pacific Express Co. 131.

EXTENSION OF HOURS OF SERVICE LAW.

Petitioners ask extension of time within which to comply with an act of Congress approved March 4, 1907, at a number of stations covered by the thirteen-hour provision and at nearly two-thirds, in the aggregate, of the stations on their lines to which the nine-hour provision relates, alleging in some cases inability to secure the additional force required and in most cases the financial hardship which compliance imposes. *Held:*

That to grant such wholesale orders of extension would in effect interfere with the policy of this legislation in its fundamental aspects and amount to an amendment of the law by the official body charged with its administration. *In re Extension of Hours of Service Law.* 140.

FACILITIES OF TRAFFIC.

Act assures all shippers equal facilities and services; use of private cars in car distribution. *Ruttle et al. v. P. M. R. R. Co. et al.* 179.

Commission does not recognize right to refuse facilities or to contract with shipper for their use so as to permit discrimination. *In re Demurrage on Privately Owned Tank Cars.* 378.

Discontinuance of station at Fanshawe, Okla. *Lewis et al. v. C., R. I. & P. Ry. Co.* 138.

Duty of railroad companies to provide. *Powhatan Coal & Coke Co. v. N. & W. Ry. Co. et al.* 69.

Shipment of fruit from Michigan to Chicago. *Benton Transit Co. v. B. H.-St. J. Ry. & L. Co.* 542.

Sidings and trains for the shipment of cabbage. *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co. et al.* 20.

Unreasonable for defendant to require shippers to go so far for through billing and joint rates, when competing line offers them nearby. *Cedar Rapids & Iowa City Ry. & L. Co. v. C. & N. W. Ry. Co.* 250.

FARM MACHINERY.

From Dallas to Kansas. *Minneapolis Threshing Machine Co. v. C., I. P. Ry. Co.* 128.

FAST SERVICE.

Tonnage capacity much less to the engine for fast trains than to slow Nebraska State Railway Commission *v. U. P. R. R. Co.* 349.

Statutes of some States require State business moved a minimum distance per day. *Topeka Banana Dealers' Assn. et al. v. St. L. & S. F. R. R. Co.* 620.

FERTILIZER.

Nitrate of soda, when for fertilizer, at a lower rate than for manufacture. *Ft. Smith Traffic Bureau v. St. L. & S. F. R. R. Co. et al.* 651.

Stable manure from Washington, D. C., to Glendale, Md. *White Water Co. v. P., B. & W. R. R. Co.* 526.

FINDINGS OF FACT.

Commission no longer required to state. *Cattle Raisers' Assn. of Te. M., K. & T. Ry. Co. et al.* 418.

FISH.

Express rates on. *Barnon v. Southern Express Co.* 516.

FLOUR.

Complainant is engaged in grinding spring wheat flour at Buffalo in connection with mills located at Minneapolis. On May 1, 1907, rate from Buffalo New York on flour was advanced from 10 cents to 11 cents per 100 pounds, no similar advance was made from Minneapolis; *Held*, that this 11-cent and one of 13 cents to New England points were unjust and unreasonable should not exceed 10 cents to New York and 12 cents to New England. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 31.

FOREIGN COMMERCE.

If through billing determines jurisdiction, then all carriers participate come subject to regulation, but as to foreign business the rail carrier, so far as this law is concerned, has a purely contractual or proprietary relation, relation regulated by this act. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.* 206.

The jurisdiction of this Commission is not to be determined by anything than the language of section 1 of the act, and in this section is found a distinction drawn between interstate commerce and foreign commerce country not adjacent to the United States; and this distinction saves foreign commerce from the effect of that provision of the section as to continuous carriage beyond the American seaboard. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.* 206.

FOREIGN COUNTRY.

As modified by the word "adjacent." *Lykes S. S. Line v. Commercial Club of Duluth et al.* 310.

FREE STORAGE.

At Duluth in transit until opening of navigation. *Commercial Club of Duluth v. N. Pac. Ry. Co. et al.* 288.

FUEL.

Defendants claim that the necessity for fuel with which to operate their engines gives them the right to make private contracts therefor, and that the failure

count against the mines the cars furnished for such fuel supply permits them to make advantageous contracts and to get their coal at a lower price; that if they counted their own fuel cars in the distribution they would not only have to pay a higher price for their coal, but might not be able to contract for it at all. *Traer v. C. & A. R. R. Co.* 451.

Fuel is necessary and essential to the operation of a railroad, and the right of a carrier to contract for the purchase of its fuel supply with one mine or with a number of mines must be conceded; but if a carrier and a mine owner make a contract for the fuel supply of the carrier which does violence to the act to regulate commerce or to the decisions of the courts or is opposed to public policy they are in no better position than the parties to any other contract which violates the legal principles relating thereto. A carrier can not inject illegalities in such contract and have it upheld on the ground of compelling necessity. *Id.*

Railroads must have fuel, but not justified in beating down price by car distribution or penalizing mines. *Royal Coal & Coke Co. v. So. Ry. Co.* 440.

FURNITURE.

Rates on. *New Albany Furniture Co. v. M. J. & K. C. R. R. Co. et al.* 594.

GILSONITE.

Origin of and rates on. *American Asphalt Asso. v. Uintah Ry. Co.* 196.

GLASS.

Circumstances must be considered as to imports, etc. *Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al.* 87.

GRADED RATES.

From territory east of Missouri River to Pacific Coast terminals. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

"Graded" scale or tabulation showing rate on package of given size by express, when the base rate per 100 pounds is known. *Kindel v. Adams Express Co. et al.* 475.

No impropriety in graduation of rates in accordance with actual values. *In re Released Rates*, 550.

GRADES.

Considered. *American Asphalt Asso. v. Uintah Ry. Co.* 196.

Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 329.

Burgess et al. v. Transcontinental Freight Bureau et al. 668.

GRAIN.

Rates exacted by defendants for transporting grain and products thereof from St. Louis, Mo., to Little Rock, Ark., namely, a rate of 18 cents per 100 pounds on wheat and its products and a rate of 15 cents per 100 pounds on other kinds of grain, known as coarse grains, including corn and oats, and the products of such coarse grains, declared unlawful, so far as applied to such transportation after said traffic has been carried to St. Louis by railroad from points outside that city, and defendants required to reduce the former rate to the extent of 5 cents and the latter to the extent of 4 cents. *Traffic Bureau, etc., of St. L. v. Mo. Pac. Ry. Co. et al.* 11.

Differentials from Buffalo to Atlantic ports. *Banner Milling Co. v. N. Y. C. & H. R. R. Co.* 31.

MacMurray et al. v. U. P. R. R. Co. 531.

In re allowances to elevators by U. P. R. R. Co. 498.

Traffic Bureau, etc., of St. Louis, v. Mo. Pac. Ry. Co. et al. 105.

GROUP RATES.

Not disturbed without proof of tangible injury. *Bovalrd Supply Co. v. A. & S. F. Ry. Co. et al.* 56.

Pocahontas and Tug River coal fields considered as one. *Raven Red Coal Co. et al. v. N. & W. Ry. Co.* 230.

Point added to group. *Cedar Rapids & Iowa City Ry. & L. Co. v. C. & N. Ry. Co.* 250.

Rates cast from paper-producing points. *Rhineland Paper Co. v. N. P. Ry. Co. et al.* 633.

Should not be disturbed on application of some point not in the group until point complaining was put to unreasonable disadvantage thereby. *Phillips Trawick-James Co. et al. v. So. Pac. Co. et al.* 644.

GUM LUMBER.

Rates on, compared with oak. *Thompson Lumber Co. et al. v. I. C. R. Co. et al.* 657.

HARDWOOD.

Thompson Lumber Co. et al. v. I. C. R. R. Co. et al. 657.

Burgess et al. v. Transcontinental Freight Bureau et al. 668.

HARTER ACT.

Exemption of responsibility on account of perils of the sea. *Wyman, Partridge & Co. et al. v. B. & M. R. R. Co. et al.* 258.

HAY.

Cars for. *Lanier Harris Coal & Grain Co. et al. v. St. L. & S. F. R. R. Co. et al.* 148.

The defendant carrier for some years had a proportional rate of 15 cents per 100 pounds on hay when carried from Kansas City, Mo., through a part of the state of Kansas, to Cape Girardeau, Mo. This rate was canceled and a higher rate became effective for a short time. Thereafter the 15-cent rate was restored. During the time the higher rate was in effect complainant shipped two carloads of hay over the route named: *Held*, That the rate in excess of 15 cents per 100 pounds on hay in carloads when shipped from Kansas City, Mo. over the route named, to Cape Girardeau, Mo., is unjust and unreasonable and that complainant is entitled to an order for reparation. *North Bros. v. St. L. & S. F. R. R. Co.* 152.

Ruttle et al. v. P. M. R. R. Co. 179.

HEMP.

Sources of production. *Bovalrd Supply Co. v. A., T. & S. F. Ry. Co. et al.* 148.

HIGHWAYS.

Most early charters in this country framed on theory that railroads were highways in the ordinary sense. *Ruttle et al. v. P. M. R. R. Co. et al.* 179.

HOGS.

Complaint alleges that defendants' rate of \$170 per car for the transportation of live hogs in 36-foot single-deck cars from Missouri River, St. Paul, and points intermediate, to Seattle, is unreasonable; that from branch-line stations west of the Missouri River the local rate to main-line junction is added to the \$170 rate, making an unreasonable combination through rate; and that defendants unlawfully fail and refuse to publish rates for the transportation of live hogs in double-deck cars; and damages are prayed for on account of the exaction of the alleged excessive rate on numerous shipments; on account

of alleged shrinkage in weight in single-deck cars; and for alleged losses to complainant's business during two years when alleged prohibitive rates were in force. *Held*, That the \$170 rate is not shown to be unreasonable; that there is not sufficient evidence in the record to warrant a finding that the combination rate applied on shipments from branch-line stations is excessive, but it seems that the local rate on the branch line ought to be absorbed; that the record does not justify requiring defendants to furnish double-deck cars and reestablish double-deck carload rates; and that claim for reparation must be disallowed, except on certain 10 carloads shipped in 1904 under an excessive rate of \$240 per single-deck car. *Frye & Bruhn et al. v. N. Pac. Ry. Co. et al.* 501.

HOURS OF SERVICE.

In re Application of Ga. S. & Fla. Ry. Co. for extension of time within which to comply with law 134.

In re Extension of Hours of Service Law 140.

ICE.

Cars and rate. *Wagner, Zagelmeyer & Co. v. Det. & Mac. Ry. Co. et al.* 160.

ICING.

Fish in transit. *Bannon v. Southern Express Co.* 516.

IMPORT RATES.

To make the total through charge from a foreign point of origin the absolute measure of the rate to be charged on domestic traffic from the port of entry in this country through which the import shipment moves would be to establish a hard and fast rule difficult if not impossible for the rail carriers in this country to conform to in the establishment and publication of their rates, in view of that uncertain and flexible element involved in the ascertainment of the total through charges, to wit, the rates to the port. *Pittsburg Plate Glass Co. v. P., C. & St. L. Ry. Co. et al.* 87.

Detroit Chemical Works v. Northern Central Ry. Co. et al. 357.

INDUSTRIAL LINES.

Where a railroad has been constructed for a special purpose, and does not form part of any general industrial development, it does not stand in the same relation to the public as a railroad chartered and built for general purposes, and the reasonableness of its rates must be determined by the financial returns which they produce rather than by comparison with rates in effect elsewhere.

Held, That under the peculiar circumstances of this case a rate of \$8 per ton is a reasonable charge to be imposed by the defendant for the transportation of gilsonite, a low-grade commodity, a distance of 54 miles. *American Asphalt Asso. v. Uintah Ry. Co.* 196.

Leonard v. K. C. S. Ry. Co. et al. 573.

La Salle & Bureau County R. R. Co. v. C. & N. W. Ry. Co. 610.

An interstate carrier, in order to build up enterprises of the same character on its own line and to prevent the trade of its local industries from being displaced by the competition of manufacturers of the same commodities on connecting lines, can not deny to industries on the lines of such connections the benefit of through routes and joint rates; nor is the fact that the revenues of the carrier may be reduced by establishing such through routes and joint rates a material consideration. *Cardiff Coal Co. v. C. M. & St. P. Ry. Co. et al.* 460.

New Albany Furniture Co. v. M. J. & K. C. Ry. Co. et al. 594.

No part of business of railroad to define territory including localities may sell. *Lincoln Commercial Club v. C.* 319.

One industry may not be built up by privileges denied unreasonable disadvantage against another. *Traer v. C.* 451.

INLAND CARRIAGE.

This position does not conclude the Commission against the relation which exists between the rail carriers of the defendant water carriers and condemnation of such a carriers to the seaboard are by any means whatsoever of the act or omitting to comply with its every requirement. *Shipping Co. v. Hamburg-American Packet Co. et al.* 29.

Unjust discrimination in rates against domestic ship favor of import shipments was alleged, on the ground that are relatively higher than the inland rail proportion of the point of origin in a foreign country. *Pittsburg Plate & St. P. Ry. Co. et al.* 87.

Under the law, as interpreted by the Supreme Court *Texas & Pacific Railway Company v. Interstate Commerce U. S.*, 197, the Commission can not consider such discrimination constituting unjust discrimination. *Id.*

Transportation from a seaport of the United States country to an interior American destination, in completion of freight from a point in a foreign but not adjacent upon a joint through rate or upon a separately established land rate applicable only to imports moving through, is the transportation of traffic starting at such domestic port same destination. *Id.*

The rate of \$2.32 per ton of 2,240 pounds on imported more to Detroit is now and was during the time it was in unjust, and should not exceed \$2.21 per ton. *Reparations Chemical Works v. Northern Central Ry. Co. et al.* 35.

Cosmopolitan Shipping Co. v. Hamburg-American Packet Lykes S. S. Line v. Commercial Union et al. 310.

INSURANCE.

Included in rate. *Wyman, Partridge & Co. v. B. & M.*

Seems proper when risk enlarged by increased value increased. In re Released Rates 550.

On the facts shown of record: *Held*, That the carrier recover from defendant \$488.61 as reparation on account of unlawful storage and insurance charges at West Fair shipments of rye. *England & Co. v. B. & O. R. R. Co.* 1

INTEREST.

Cases in which interest is included in orders for repairs *Baer Brothers Mercantile Company v. Missouri Pacific Company et al.* 329.

Frye & Bruhn et al. v. Northern Pacific Railway Hydraulic Press Brick Company v. St. Louis & Company et al. 342.

Koch Secret Service v. Louisville & Nashville Rail

INTEREST—Continued.

Cases in which interest is included in orders for reparation—Cont'd.

Laning-Harris Coal & Grain Company v. Missouri Pacific Railway Company et al. 154.

Minneapolis Threshing Machine Company v. Chicago, Rock Island & Pacific Railway Company, 128.

Mort v. Chicago, Milwaukee & St. Paul Railway Company, 513.

North Brothers v. St. Louis & San Francisco Railroad Company, 152.

Ocheltree Grain Company v. St. Louis & San Francisco Railroad Company, 46.

Wellington et al. v. St. Louis & San Francisco Railroad Company, 534.

INTERMEDIATE RATES.

Complaint that section 4 of the act is violated in that a lesser rate is charged on bananas from New Orleans to Burlington, Iowa, than to Kansas City, an intermediate point, is not sustained, as the joint rate quoted via Kansas City is a paper rate on which the traffic does not move, the bananas destined for Burlington moving through St. Louis. Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al. 620.

Chester, Va., between Petersburg and Richmond. Randolph Lumber Co. v. S. A. Ry. et al. 601.

Leadville between Salt Lake City and St. Louis. Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 329.

Tariff affirmative and definite or should be eliminated. White Water Farms Co. v. P. B. & W. R. R. Co. 526.

INTERURBAN LINE.

Act makes no distinction between steam and electricity. Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co. et al. 20.

IN TRANSIT.

Bran the product of wheat, taking wheat rate. Marshal Michel Grain Co. v. Mo. Pac. Ry. Co. 566.

Clipping, cleaning, grading, weighing, and mixing of grain. Re Allowances to Elevators by U. P. R. R. Co. 498.

Privileges if allowed should be open to all. Quimby et al. v. Maine Central R. R. Co. et al. 246.

Stoppage for partial unloading. Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al. 620.

Storage at Duluth or Superior, Wis. Commercial Club of Duluth v. N. P. Ry. Co. et al. 288.

IRON ORE.

Rates on, from Chicago and Chicago points to Pacific coast terminals. Winter's Metallic Paint Co. v. A., T. & S. F. Ry. Co. et al. 400.

IRON PYRITES.

Rates on. Detroit Chemical Works v. Northern Central Ry. Co. et al. 357.

Detroit Chemical Works v. Erie R. R. Co. et al. 363.

JOBBER'S RATES.

Pecos Mercantile Co. v. A., T. & S. F. Ry. Co. et al. 173.

Payne-Gardner & Co. v. L. & N. R. R. Co. 638.

JOINT RATES.

Complainant demands through routes and general class and commodity rates on movements in both directions between points on its own line and points on the lines of the defendants, but it appeared from the record in the case that the shipping community described therein was already supplied with a reasonable or satisfactory through route. For this reason the complaint should be dismissed. *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co. et al.* 20.

In general, joint through rates are lower than the sum of the locals between two points, and obviously there can very seldom be any transportation reason why such should not be the case. *Laning Harris Coal & Grain Co. v. Mo. P. Ry. Co. et al.* 154.

There can be but one legal rate between two points. This rate must be (a) the local rate if over one road, or (b) the joint rate if over a through route composed of two or more roads which have agreed to a joint rate, or (c) a combination of separately established rates applicable on through business over a through route which does not enjoy a joint rate. *Id.*

On complaint of failure by defendant to establish through routes and joint rates with complainant between interstate points on their respective roads, it appeared that the shipping communities at points on complainant's line between Coralville, Iowa, and Cedar Rapids, Iowa, do not at this time enjoy the benefit of any reasonable or satisfactory through route from and to Chicago and other points reached by defendant; *Held*, That through routes and joint rates thereover which shall not exceed by more than 10 per cent the class and commodity rates of defendant between Chicago and other points and Cedar Rapids, should be established and maintained for the transportation of interstate traffic from and to Coralville and all other points on complainant's line intermediate to Cedar Rapids to and from Chicago and other points on the line of defendant via junction point of the two roads at Cedar Rapids. *Cedar Rapids & Iowa City Ry. & Light Co. v. C. & N. W. Ry. Co.* 250.

Complainant formerly was allowed through routes and joint rates over defendants' lines from its coal mines to certain interstate points, but subsequently this privilege was withdrawn. Complainant's daily capacity is in excess of the requirements of the local markets, and the complaint is filed for the purpose of securing a wider market. While such through routes and joint rates were in force complainant was able to sell a substantial volume of coal to the interstate territory in question, but since such withdrawal the greater part of this trade has been lost. While denying to complainant such an outlet from its mines, through routes and joint rates are maintained to such interstate points from other near-by mines. Upon petition of complainant for an order reestablishing the through routes and joint rates previously in effect; *Held*, That the routes over other lines referred to in the opinion are not reasonable or satisfactory; that complainant should again be accorded the through routes and joint rates over the lines of defendants, and that the refusal to establish through routes and joint rates from complainant's mines is an unlawful discrimination. *Cardiff Coal Co. v. C. & N. W. Ry. Co. et al.* 460.

This case involves a state of facts substantially similar to that presented in *Cardiff Coal Co. v. C. & N. W. Ry. Co. et al.*, *supra*, and complainant is entitled to an order establishing through routes and joint rates to all strictly local points on the line of the principal defendant to which no through routes now exist from Cardiff. *Cardiff Coal Co. v. C. & N. W. Ry. Co. et al.* 471.

Applicable only to particular shipper or class and denied to other not permissible. *Fort Smith Traffic Bureau v. St. L. & S. F. R. R. Co. et al.* 651.

Broom corn from Elk City to Sioux City. *Coomes & McGraw v. C. M. & St. P. Ry. Co.* et al. 192.

Canned vegetables Green Bay to Washington. *Larsen Canning Co. v. C. & N. W. Ry. Co.* et al. 286.

Coal from points without Missouri to Westport. *Leonard v. K. C. S. Ry. Co.* et al. 573.

Cotton seed. *Memphis Freight Bureau v. Ft. S. & W. R. R. Co.* et al. 1.

Ice from Toledo to Toledo and Cleveland. *Wagner, Zagelmeyer & Co. v. Detroit & Mackinac Ry. Co.* et al. 160.

Lincoln compared with Omaha. *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.* et al. 319.

Lumber from Ashland to Nash. *Gentry v. A., T. & S. F. Ry. Co.* et al. 171.

None in effect, local applicable. *Hollis Stedman & Sons v. C. & N. W. Ry. Co.* et al. 167.

Unjust in so far as they exceeded the sum of the locals. *Coomes & McGraw v. C., M. & St. P. Ry. Co.* et al. 192.

With ocean line more properly termed through export or import rate. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.* et al. 266.

JURISDICTION OF THE COMMISSION.

The act provides that this Commission shall exercise jurisdiction over the inland portion of the haul, either to or from the foreign country; and it must logically and necessarily follow that the rate which must be filed with the Commission under section 6 of the act is the rate governing such movement. On foreign commerce the rate to be published with this Commission should be the rate to the port and from the port—an open rate, which any who desire to do so may use with equal advantage. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.* et al. 266.

In all controversies before the Commission if there is lack of jurisdiction, either from the absence of essential facts or through want of power in the statute, it is the duty of the Commission, on its own motion, to deny jurisdiction. *Chandler Cotton Oil Co. v. Ft. S. & W. R. R. Co.* 473.

The withdrawal of lake-and-rail rates for the winter during the period of closed navigation with the intention of restoring them with the opening of navigation in the spring is not sufficient to take from the jurisdiction of the Commission a rail line which, like the defendant, lies wholly within one State, because during that limited time it has no connections by which it can actually engage in interstate traffic. *Benton Transit Co. v. B. H.—St. Joe Ry. & L. Co.* 542.

The Commission may afford relief from the imposition of demurrage charges upon a showing that the complainant has been subjected either to unjust discrimination or to the payment of unreasonable charges. As the record in this case does not warrant a finding of unjust discrimination or unreasonable charges, the complaint is dismissed. *MacBride Coal & Coke Co. v. C., St. P., M. & O. Ry. Co.* 571.

If complainant contends that demurrage charges exacted by defendant did not constitute a lawful lien upon the property, and that defendant's action amounted to an unlawful conversion, its action should have been brought before some court of competent jurisdiction and not before this Commission, whose function is to enforce the provisions of the act to regulate commerce and kindred laws. *Id.*

Act does not extend to State traffic. *Hussey v. C., R. I. & P. Ry. Co.* 366.

Authority not given to require carriers to establish special fares. *Field v. Southern Ry. Co.* et al. 298.

Commission without power to modify tariffs save as prescribed in the act. *La Salle & Bureau County R. R. Co. v. C. & N. W. Ry. Co.* 610.

Foreign corporation stockholding not included. *Lykes Steamship Line Commercial Union et al.* 310.

Formal complaints under section 13. *Manning v. C. & A. R. R. Co.* 125.

Function of Commission to administer the act. *Haines v. C., R. I. & P. R. et al.* 214.

Power to establish through routes and joint rates. *Cardiff Coal Co. v. C., J. & St. P. Ry. Co. et al.* 460.

Provisions of section 15. *Romona Oolitic Stone Co. v. Vandalla R. R. Co.* 11.

State railroad, conditions under which subject. *Leonard v. K. C. S. Ry. Co. et al.* 573.

Transportation under consideration and all roads participating subject to Commission. *Baer Bros. Mercantile Co. v. Mo. P. Ry. Co. et al.* 320.

KNIT GOODS.

Rates on. *Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al.* 388.

LAKE-AND-RAIL RATES.

Unless a railway forming a part of a lake-and-rail route sees fit to hold itself responsible for losses arising from perils of the sea, it should tender to the public a transportation contract which leaves shippers free to arrange for their own marine insurance. *Wyman, Partridge & Co. et al. v. B. & M. R. R. et al.* 258.

Withdrawal during close of navigation does not take rail line from jurisdiction of Commission. *Benton Transit Co. v. B. H.-St. J. Ry. & L. Co.* 542.

Banner Milling Co. v. N. Y. C. & H. R. R. R. Co. 31.

LIMITATIONS.

A statute of limitations is a wise method of forcing claimants either to assert their rights against others or definitely abandon them. Persons against whom claims may be made are fairly entitled to repose at some definite point of time, and this is especially true in connection with matters of transportation. Waybills and other papers accumulate in vast numbers in the course of a few months, and carriers are entitled, if claims are to be made, to have them made with reasonable promptness. *Missouri & Kansas Shippers' Assn. v. A., T. & S. F. Ry. Co.* 411.

Complaints are to be filed within two years from the time the cause of action accrues. *Goff-Kirby Coal Co. et al. v. B. & L. E. R. R. Co.* 383.

LIVE STOCK.

Rates on. *Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co. et al.* 416.

LOADING.

Wharf facilities at New Orleans for bananas. *Topeka Banana Dealers' Assn. et al. v. St. L. & S. F. R. R. Co. et al.* 620.

LOCAL RATES.

Two cars of coal were shipped by complainant from Springfield, Ill., to Kansas City, Mo., via the Wabash Railroad, and, after arrival at Kansas City, one car was forwarded by complainant to Salina, Kans., and one to Kipp, Kans., both going via the Missouri Pacific Railway. The joint rate on coal from Springfield to Salina or Kipp via Kansas City is \$3.73 per ton, whereas the combination rate is \$3.50. On the foregoing shipments defendants charge and collected the higher joint rate. Upon complaint that this charge is unres-

sonable; *Held*, That these shipments consisted of strictly local shipments into and out of Kansas City, and that the application of the joint through rate was not in accordance with the published tariffs, but that the lawful rate applicable on such shipments was the combination of locals. Reparation awarded. *Lanning-Harris Coal & Grain Co. v. Mo. Pac. Ry. Co. et al.* 154.

Applicable to through shipments when no joint rates established. *Larsen Canning Co. v. C. & N. W. Ry. Co. et al.* 286.

Combinations of, as measure of reasonable joint rate. *Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al.* 1.

Expense bills on through shipment. *Leonard v. K. C. S. Ry. Co. et al.* 573.

Express rates on small packages under graduated scale. *Kindel v. Adams Express Co. et al.* 475.

Through rate higher than sum of locals. *Butters Lumber Co. v. A. C. L. R. R. Co. et al.* 521.

LOCALITIES.

The fact that express rates in and out of a particular business locality are higher than those in and out of a competing locality from a common source of supply is not of the same importance as in case of freight rates, since the wholesaler ordinarily brings his merchandise in by freight and also distributes it by freight. *Kindel v. Adams Express Co. et al.* 475.

Amarillo, Tex., from Trinidad, Colo.; coke rates, 240.

Anthony, Kans., from eastern points, etc.; wholesale groceries, 605.

Ardmore and Pauls Valley, Okla.; compression of cotton, 187.

Ashland, Tex., to Nash, Okla.; through route, lumber, lath, and shingles, 171.

Baltimore to Detroit; imported iron pyrites, 357.

Barnett to McAlester, Ind. T.; cross-ties, overcharge, 366.

Bloomington, Paxton and Pawnee Junction, Ill.; railroad cross-ties, 16.

Boardman, N. C., to Pottsville and Schuylkill Haven, Pa.; lumber, overcharge, 521.

Buffalo to Irvington, N. J.; flour, C. L. 39.

Buffalo to Philadelphia and Baltimore; flour, C. L. 40.

Buffalo to Providence; flour, C. L., overcharge, 37.

Buffalo to Unionville, Conn.; flour, C. L. 38.

Cardiff, Ill., to C. & N. W. points; through routes on coal, 471.

Cardiff, Ill., to St. Paul Ry. points; through routes on coal, 460.

Cheltenham, Mo., to New Iberia, La.; enameled brick, 342.

Chester, Va.; lumber rates to Ohio, 601.

Chicago, from east; rail and lake rates, 258.

Chicago, etc., to Pacific coast; hardwood lumber, 668.

Chicago points to Pacific coast; ground iron ore, 409.

Chickasha, Okla.; snapped corn, 238.

Cincinnati to Chicago; cotton piece goods, 48.

Cleveland, Ohio; wire coat hooks, 118.

Cleveland, Ohio, and Durham, N. H.; wire brushes and brooms, 109.

Clinch Valley to Seaboard; coal rates, 230.

Coal Creek District, Tenn.; car distribution, 440.

Coralville and Cedar Rapids, Iowa, to Chicago; through routes, 250.

Columbia, Tenn., to Jacksonville, Fla.; cream, express rates, 536.

Council Bluffs and Kansas City; elevator allowances, 498.

Dallas to Kansas City; agricultural implements, 128.

Denver from eastern points; express rates, 475.

Memphis, Tenn.; cottonseed rates, 1.

- Denver from New England points; cotton piece goods, 225.
 Denver from St. Louis; cameras and motorcycles, 283.
 Detroit from New York; imported iron pyrites, 363.
 Dragon, Utah, to Mack, Colo.; gilsonite rates, 196.
 Duluth and Superior, Wis.; free storage in transit, 288.
 Duluth to Rhinelander, Wis.; wood pulp and paper, 633.
 Elder, Ind. T., station facilities, 103.
 Elk City via Omaha to Sioux City, Iowa; broom corn, 192.
 Enid, Okla.; coal rates, 222, 223, 224.
 Fanshawe, Okla., station facilities, 138.
 Ft. Smith, Ark.; nitrate of soda, 651.
 Gallatin, Tenn., from New Orleans; sugar, C. L. 638.
 Goltry, Okla., from Kansas and Oklahoma coal mines; coal, 219.
 Green Bay, Wis., to Washington, Ohio; vegetables, canned, 286.
 Greenfield, Ind., to Calico Rock, Ark.; glass fruit jars, 203.
 Haines City, Fla., to St. Louis; fish in packages, 510.
 Illinois mines on lines of defendants; car distribution, 451.
 Illinois points, south; through routes, 20.
 Independence, Kans., from San Francisco; rope cables, 56.
 Kansas City, Mo.; switching charge, 573.
 Kansas City, Mo.; switching charges, 411.
 Kansas City, Mo.; switching charges on wood, 534.
 Kansas City, Mo., to Cape Girardeau, Mo.; hay, C. L. 152.
 Kingfisher, Okla.; coal rates, 222.
 Kingfisher, Okla.; coal rates, 221.
 Kingfisher, Okla.; coal rates, 214.
 Kingfisher, Okla.; coal rates in, milling in transit out, 220.
 La Salle Ill., to La Salle Junction; terminal allowance, 610.
 Lavery, Okla., to Millican and Navasota, Tex.; snapped corn, 46.
 Leadville from St. Louis; beer, C. L. 320.
 Leon, Kans., to Chicago; cattle rates, 513.
 Leona, Kans., from Springfield, Ill.; coal rates, 317.
 Lincoln, Nebr., compared with Omaha; commodity rates, 319.
 Lithonia, Ga., to Chicago; stone paving blocks, 401.
 Little Rock from defendant's line in Oklahoma; cotton seed, 243.
 Manitowoc, Wis., to Baltimore, via West Fairport, Ohio; rye, 614.
 Marion, Ill., to Minneapolis, Minn.; demurrage, 571.
 Memphis to New Orleans; hard-wood-lumber rates, 657.
 Michigan points, rail and lake, to Chicago; fruits, 542.
 Mobile and New Orleans to Kansas City, etc.; bananas, 620.
 Muskogee, Okla.; compress, 68.
 Nashville, Tenn., to Evansville, Ind.; party rates, 523.
 Nashville from Pacific Coast points; canned goods, 644.
 New Albany, Miss., to New England points, etc.; furniture, 594.
 New England compared with New York; grain and grain products, 31.
 Official Classification Territory; masurite, 405.
 Oklahoma City to Galveston; walnut lumber rates, 43.
 Owensboro and Henderson, Ky., to Trunk and Central Territory; gene
 rates, 300.
 Paw Paw, Ind. T., and Lamar, Mo.; fitting stock cars for hay, 148.
 Pecos, Tex., from Chicago, etc.; class rates, 173.
 Pittsburg, Pa.; domestic plate glass compared with foreign, 87.
 Pocahontas Flat Top Coal District; car distribution, 69.
 Pond Creek, Okla.; coal rates, 257.

Port Austin Division; worn-out coal cars, etc., for hay, 179.
 Prague, Okla., to Warwick, Okla., cotton seed, 473.
 Richmond, Va.; transfer slips, 212.
 Rock Springs and Hanna, Wyo., to Nebraska; coal rates, 349.
 Romona, Ind.; stone, C. L., 115.
 Romona, Ind., to all points; carload weights, 560.
 St. Louis to Little Rock; grain and products, 11.
 St. Louis to Little Rock; grain and products, 105.
 St. Paul, Nebr., to Denver; milk and cream, 131.
 St. Petersburg, Fla., to Atlanta; oranges, 529.
 Salina, Kans., to Little Rock; bran, C. L., 560.
 Seattle from Missouri River, St. Paul and intermediate; rate on live hogs, 501.
 Southern Pacific Company points; rebates, discounts, etc., 123.
 Springfield, Ill.; coal, C. L., overcharge, 154.
 Texas cattle ranges to market; advanced cattle rates, 418.
 Tobico, Mich.; car distribution for ice, 160.
 Washington, D. C., to Glendale, Md.; stable manure, C. L., 520.
 Washington County, Me.; milling corn in transit, 246.
 Waukesha, Wis., to Minnesota, Iowa, and South Dakota; mineral water, mixed C. L. with beer, 28.
 Wautoma, Wis., to Springfield, Mo.; potatoes, 167.
 Western Classification Territory; multigraphs, classification, 295.
 Wichita, Kans., compared with Kansas City; cotton piece goods, 383.
 Wood River, Nebr.; car distribution, 531.

LOCATION.

Complainants, situated in the eastern portion of Washington County, Me., allege that by reason of their location they can not take advantage of the milling-in-transit privilege on corn, although their competitors at Bangor and Lewiston, Me., can do so, and therefore allowance of the transit privilege at Bangor and Lewiston constitutes undue discrimination against complainants; *Held*, That the disadvantage under which complainants labor is primarily due to their unfavorable location, and that it is not the province of the Commission to overcome disadvantages of this nature by adjustment of transportation charges. *Quimby et al. v. Maine Central R. R. Co. et al.* 246.

Advantages of location, such as proximity to a navigable stream or strong competition between carriers, naturally result in lower rates to a town so situated, and it is not the province of the Commission to disturb the resulting rate relations unless the discrepancy is so great as to effect an unjust discrimination against the noncompetitive point. But the mere fact that a given town has been recognized as a trade center, and is enabled by its more favorable rate adjustment to distribute in a certain territory, can not justify the continuance of relative rates which result in undue preference. *Payne-Gardner Co. v. L. & N. R. R. Co.* 638.

Commission held that western cities be given the advantage of their proximity to Gulf ports, but not that railroads west of the river be placed on a rate basis no higher than any more thickly populated section. *Topeka Banana Dealers' Assn. et al. v. St. L. & S. F. R. R. Co. et al.* 620.

Geographical conditions narrow complainant's outlet. *Cardiff Coal Co. v. C. M. & St. P. Ry. Co. et al.* 460.

Points nearer origin naturally have some advantage. *Phillips-Trawick-James Co. v. So. Pac. Co. et al.* 644.

Topographical and railway lines as affecting rate differences. *Rhineland Paper Co. v. Nor. Pac. Ry. Co. et al.* 633.

LONG AND SHORT HAUL.

If the influence of competition between points of production, in commodities between carriers, and in rates prevailing at the farther distant point, but at the nearer one, controls the establishment of a lower rate to the former, will constitute such dissimilarity of circumstances as will justify the lower rate for the longer haul. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Complaint attacks the reasonableness of rates on canned goods and dried fruit from Pacific coast terminals to Nashville as compared with other points in Tennessee, Ohio, and Kentucky, and alleges violation of the fourth section of the act; *Held*, That the rates complained of are not unreasonable *per se* and that they do not unjustly discriminate against Nashville and in favor of the other points named. *Phillips-Trawick-James Co. v. So. Pac. Co. et al.* 644.

The record discloses that the traffic involved in the complaint is hauled through Nashville to farther distant points at lower rates than are charged at Nashville by only one defendant, and by that defendant to only four of the points mentioned in the complaint. The controlling conditions of competition at each of the four points are found to be such as to relieve defendant from the charge of violating the long and short haul section of the act. *Id.*

Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al. 388

Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

Minneapolis Threshing Machine Co. v. C., R. I. & P. Ry. Co. 128.

Railroad Commission of Kentucky v. L. & N. R. R. Co. et al. 300.

Randolph Lumber Co. v. S. A. L. Ry. et al. 601.

Pecos Mercantile Co. v. A., T. & S. F. Ry. Co. et al. 173.

LOSS.

If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid. *In re Release Rates*, 550.

Tonnage losses to complainant by cancellation of through routes. *Carroll Coal Co. v. C., M. & St. P. Ry. Co. et al.* 460.

LUMBER.

The rate of 12 cents per 100 pounds now in effect on hardwood lumber from Memphis to New Orleans is unreasonable and should not exceed 10 cents per 100 pounds. *Thompson Lumber Co. et al. v. I. C. R. R. Co. et al.* 657.

Rates upon soft-wood lumber from Pacific coast producing points may properly be lower to eastern destinations than rates upon hardwood lumber from such eastern destinations to Pacific coast points. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

A rate of 85 cents from Chicago and Chicago points to Pacific coast points upon hardwood lumber is excessive; that rate should not exceed 75 cents.

Combination rates on Richmond. *Butters Lumber Co. v. A. C. L. R. R. Co. et al.* 521.

Differential against Lincoln compared with Omaha. *Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al.* 319.

Rates on Petersburg and Richmond to Columbus. *Randolph Lumber Co. v. S. A. L. Ry. et al.* 601.

Walnut at Oklahoma City. *Miller Walnut Co. v. A., T. & S. F. Ry. Co. et al.* 4

LUMP COAL.

Rates on. *Nebraska State Railway Commission v. U. P. R. R. Co.* 349.

MANUFACTURERS' RATE.

After negotiations rates adjusted and complainant changed patterns. *New Albany Furniture Co. v. M. J. & K. C. R. R. Co. et al.* 594.

Carrier may offer inducements to industries to locate. It may not offer unlawful or discriminatory privileges. *Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al.* 1.

It must not be inferred that railways have no right to foster enterprises upon their own systems. *Reliance Textile & Dye Works v. So. Ry. Co. et al.* 48.

Merchant's Freight Bureau of Little Rock v. Mid. Val. R. R. Co. et al. 243.
Traer v. C. & A. R. R. Co. et al. 451.

MANURE.

Rates on. *White Water Farms Co. v. P., B. & W. R. R. Co.* 526.

MARINE INSURANCE.

Wyman, Partridge & Co. v. B. & M. R. R. et al. 258.

MARKET COMPETITION.

The fact that there is competition for the purchase of this coal between Nebraska communities and communities in Wyoming and Utah affords no justification to the carrier for charging more than a reasonable rate for the transportation of such coal as the Nebraska people may succeed in buying. No justification exists for the maintenance of a blanket rate on coal to all points on defendant's lines in Nebraska. *Nebraska State Railway Commission v. U. P. R. R. Co.* 349.

Eastern and western rope in Missouri River territory. *Bovalrd Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

MASURITE.

Masurite Explosive Co. v. P. & L. E. R. R. Co. et al. 465.

MEASURE OF RATES.

It is not incumbent upon a road to measure the rates to all points on its line from and to which it handles the bulk of the traffic by lower rates fixed by competitors operating over a more direct route to some other point also on its line but to which it handles an unappreciable volume of traffic. So to hold would be totally to disregard the effect of competitive conditions which the Supreme Court has held in numerous cases as justifying the application of lower rates to farther distant points over the same line in the same direction. The long and short haul section of the act, as construed by the courts, prohibits the charging of a higher rate to a less distant point only where the carrier responsible for both rates occupies a like relation to the more distant point to which the lower rate applies. *Railroad Commission of Kentucky v. L. & N. R. R. Co. et al.* 300.

Bulk of traffic not measured by more direct route of competitors with inappreciable volume. *Id.*

Old rate paid when complainant was receiving rebates unlawful and no measure. *Frye & Bruhn et al. v. Nor. Pac. Ry. Co. et al.* 501.

Erroneous application of unlawful rate no evidence higher rate unreasonable. *Bovalrd Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Intense competition does not mark the limit. *Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al.* 87.

MEAT PRODUCTS.

Pacific coast supply. *Frye & Bruhn et al. v. N. Pac. Ry. Co. et al.* 501.

MILEAGE RATE.

Distance basis observed except where competition forces adjustment. *Payne-Gardner Co. v. L. & N. R. R. Co.* 638.

MILK.

Rates on. *Merchants' Traffic Assn. v. Pacific Exp*

MILLING-IN-TRANSIT.

Bangor and Lewiston, Maine, on corn. *Quimby & Co. et al.* 246.

Salina, Kans., to Little Rock—Bran—No combinat shall Michel Grain Co. *v. Mo. Pac. Ry. Co.* 506.

Kingfisher Mill & Elevator Co. *v. C., R. I. & P. Ry.*

MINE DISTRIBUTION.

Effect of contract. *Traer v. I. C. R. R. Co. et al.* 4

Mine capacity may be greater than allotment of Coke Co. *v. N. & W. Ry. Co. et al.* 69.

Royal Coal & Coke Co. *v. Southern Ry. Co.* 440.

MINERAL WATER.

Mixed carload with beer. *Milwaukee-Waukesha St. P. Ry. Co. et al.* 28.

MINIMUM WEIGHT.

Masurite classified as $1\frac{1}{2}$ times first class in less class in carloads, minimum 20,000 pounds. *Masurit E. R. R. Co. et al.* 405.

The fixing of the minimum weight at 20,000 pound from New Orleans and Mobile to points west of the assessing a minimum weight of 18,000 pounds to Chicago river, does not result in undue discrimination, as it is a minima is made to meet competition through bananas from New Orleans and Mobile are usually pounds in excess of the 20,000-pound minimum. *Top et al. v. St. L. & S. F. R. R. Co. et al.* 620.

Billing as unreasonable as marked capacity. *Ro Vandalla R. R. Co.* 115.

Brick, 40,000 pounds. *Hydraulic Press Brick Co. et al.* 342.

Carloads coke, 40,000 pounds. *Amarillo Gas Co. et al.* 240.

Carriers permitted, sometimes required, to establish numerous commodities. *Georgia Rough & Cut Stone et al.* 401.

Southern Classification provides minimum shall class or commodity rate, but not higher than first class Express Co. 536.

MISROUTING.

Initial carrier at fault and should make good over *Sons v. C. & N. W. Ry. Co. et al.* 167.

MIXED CARLOADS.

Upon the circumstances disclosed by the record, refusal to apply their carload rates to shipments of imported with beer and beer products in mixed carloads *Mills Co. v. Penn. R. R. Co. et al.*, 12 I. C. C. Rep *Milwaukee-Waukesha Brewing Co. v. C., M. & St. P.*

Furniture, etc., New Albany Furniture Co. v. M. J. & K. C. R. R. Co. et al. 594.

MOLASSES.

Rate on. Thompson Lumber Co. et al. v. I. C. R. R. Co. et al. 657.

MONOPOLY.

Express company, like railroad company, common carrier, a monopoly. Kindel v. Adams Express Co. et al. 475.

MOTOR CYCLES.

Defendants' rate applied to shipments of motor cycles from St. Louis to Denver should not exceed that imposed upon bicycles between the same points. Merchants' Traffic Assn. v. A., T. & S. F. Ry. Co. et al. 283.

Forest City Freight Bureau v. A., T. & S. F. Ry. Co. et al. 295.

MULTIGRAPHS.

Classification, price and rates on. Forest City Freight Bureau v. A., T. & S. F. Ry. Co. et al. 295.

NEGLIGENCE.

A carrier must not make use of its released rates as a means of escaping liability for the consequences of its negligence, either wholly or in part. In re Released Rates, 550.

NEW LINES.

Power of regulation and protecting public make competing lines vital where transportation facilities already ample. Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co. et al. 20.

Strong lines have been built from southern points carrying commodities formerly almost exclusively from the East. Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et al. 605.

NITRATE OF AMMONIA.

Base of masurite. Masurite Explosive Co. v. P. & L. E. R. R. Co. et al. 405.

NITRATE OF SODA.

Origin and rates on. Ft. Smith Traffic Bureau v. St. L. & S. F. R. R. Co. et al. 651.

NITROGLYCERIN.

Base of dynamite, etc. Masurite Explosive Co. v. P. & L. E. R. R. Co. et al. 405.

OAK.

High ton per mile rate. Thompson Lumber Co. et al. v. I. C. R. R. Co. et al. 657.

Imported manufactured on Pacific coast. Burgess et al. v. Transcontinental Freight Bureau et al. 668.

OCEAN RATES.

An ocean carrier established under the laws of Cuba and transporting traffic between Habana and Galveston is not subject to the act to regulate commerce. Lykes Steamship Line v. Commercial Union et al. 310.

Cream via Clyde Line discontinued, express service preferable. Reynolds v. Southern Express Co. 536.

Never has been stability of rates upon water. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al. 266.

Rates to the port uncertain and flexible element. *Pittsburg Plate Glass P., C. & St. L. Ry. Co. et al.* 87.

ORANGES.

Rates on, including refrigeration. *Fain & Stamps v. A. C. L. R. Co. et al.* 529.

OVERCHARGE.

Where a shipper has paid an excessive rate he may recover as repayment the difference between the rate paid and what would have been a reasonable rate at the time, even though he may not ultimately be damaged by the payment of the higher rate. *Burgess et al. v. Transcontinental Freight E. Co. et al.* 668.

Above reasonable rate. *Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al.* 329.

Alleged. *Ocheltree Grain Co. v. St. L. & S. F. R. R. Co.* 46.

Conceded. *Ga. Rough & Cut Stone Co. v. Ga. R. R. Co. et al.* 401.

Not satisfactory remedy for unreasonable billing. *Romona Oolitic Stone Co. v. C. I. & L. Ry. Co. et al.* 569.

Oranges, C. L., St. Petersburg, Fla., to Atlanta, Ga. *Fain & Stamps v. A. C. L. R. R. Co. et al.* 529.

O. R.—OWNER'S RISK.

If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or misconduct. In re *Released Rates*, 550.

PAPER.

That, upon all the facts disclosed, the rate adjustment on paper is not to be unlawful. Weight to be given by Commission to a contract for establishment of certain rates discussed and ruling in *Commercial Club of Omaha & N. W. Ry. Co., 7 I. C. C. Rep., 386*, reaffirmed. *Rhineland Paper Co. v. N. Pac. Ry. Co. et al.* 633.

PAPER RATES.

Rates under which practically no shipments move. *Pittsburg Plate Glass P., C. & St. L. Ry. Co. et al.* 87.

Amarillo Gas Co. v. A., T. & S. F. Ry. Co. et al. 240.

Frye & Bruhn et al. v. N. Pac. Ry. Co. et al. 501.

Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al. 620.

PARTIES.

Association competent to bring complaint. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 109.

Complainant is an association within the meaning of section 13 of the act and is therefore competent to bring complaint before the Commission. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 118.

PARTY RATES.

Defendant is guilty of unjust discrimination in refusing a special excursion rate to parties of 10 or more persons in the employ of complainant, presenting it for transportation between Nashville, Tenn., and Evansville, Ind., while cordoning said rate to parties of 10 or more persons of other avocations traveling between the same points at the same time. Reparation awarded. *Koch v. N. R. R. Co. et al.* 523.

Must be open to the general public. *Field v. Southern Ry. Co. et al.* 296.

PAST RATES.

Banana rates to Chicago and Kansas City since 1893. Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co. et al. 620.

Hardwood lumber between Memphis and New Orleans since 1883. Thompson Lumber Co. et al. v. I. C. R. R. Co. et al. 657.

Jurisdiction over rates in the former Territory of Oklahoma. Hunsey v. C., R. I. & P. Ry. Co. 366.

Long maintained presumed remunerative. Detroit Chemical Works v. Northern Central Ry. Co. et al. 357.

Pecos and El Paso. Pecos Mercantile Co. v. A., T. & S. F. Ry. Co. et al. 173.

Rate sometime maintained, then advanced, again reduced, is in the nature of an admission that this rate is fair unless explained. Ocheltree Grain Co. v. St. L. & S. F. R. R. Co. 46.

Region west of Missouri River. Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et al. 605.

Since the filing of tariffs. Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al. 418.

Strong evidence of reasonableness of a rate. Burgess et al. v. Transcontinental Freight Bureau et al. 668.

Sugar from New Orleans to Nashville since 1897. Payne-Gardner Co. v. L. & N. R. R. Co. 638.

PAVING BLOCKS.

Rates on. Ga. Rough & Cut Stone Co. v. Ga. R. R. Co. et al. 401.

PERCENTAGE RATES.

Trunk line territory. Railroad Commission of Kentucky v. L. & N. R. R. Co. et al. 300.

PETROLEUM.

Re Demurrage on Privately Owned Tank Cars 378.

PLATE GLASS.

Rates on. Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al. 87.

POLICE POWER OF STATE.

Leonard v. K. C. S. Ry. Co. et al. 573.

POOLING.

The pooling of traffic by water carriers is plainly a matter over which this Commission has no jurisdiction. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al. 266.

PORT DIFFERENTIALS.

Washburn-Crosby Co. v. Pa. R. R. Co. 40.

POTATOES.

Movement of crop. Ruttle et al. v. P. M. R. R. Co. 170.

Rates on. Hollis Stedman & Sons v. C. & N. W. Ry. Co. et al. 167.

PRACTICE.

To maintain a petition before this Commission for the recovery of excessive freight charges it is not necessary that the payment of the freight should have been made under protest. Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 329.

The universal rule in the courts, also applicable to the Commission, seems to be that, under a system of pleading which permits a proceeding for damages to be instituted by the filing of a complaint, the statute of limitations does not

cease to run against the demand until the complaint has claim with sufficient particularity to make an issue. action has been pleaded there is nothing to arrest it. All the elements fairly necessary to present the cause in a complaint filed with the Commission. *Mo. & Kan & S. F. Ry. Co.* 411.

Complainant's application for leave to amend its cover establishment of through routes and joint rates on its line to and from all points over defendant's line, is does not favor a practice of ingrafting an application joint rates onto a claim for reparation upon the basis *La Salle & Bureau County R. R. Co. v. C. & N. W. Ry.*

Amendment to petition creating entirely new issue. *v. N. Y., N. H. & H. R. R. Co. et al.* 225.

Application for more specific findings. *Cattle Ra M., K. & T. Ry. Co. et al.* 418.

Demurrer sustained. *Cosmopolitan Shipping Co. v. ping Co. et al.* 266.

Exception to jurisdiction of Commission in reparation *Threshing Machine Co. v. C., R. I. & P. Ry. Co.* 128.

Form of complaint not warranting definite order. *very Co. v. A., T. & S. F. Ry. Co. et al.* 605.

Investigation not required by public interest or offering *v. C. & A. R. R. Co. et al.* 125.

Jurisdictional questions ignored when complaint dismissed *et al. v. Midland Valley R. R. Co.* 103.

Petition does not show "good cause" in alleging the Application of *Ga. S. & Fla. Ry. Co.*, for extension of Hours of Service Law, 134.

Rate established, reparation postponed for adjustment *Transcontinental Freight Bureau et al.* 668.

Reopening case. *Reliance-Textile & Dye Works v. f*

Restoration of rate. *Bunch Co. et al. v. C., R. I. &*

PRECEDENT.

Upon the hearing complainant offered the findings as shown in the former case and insisted that this ought to be its right to an order in the present case; *Held*, that the entire matter must be tried de novo. *Merchants' Traffic H. R. R. Co. et al.* 225

Chicago & Milwaukee Electric Ry. Co. v. Illinois C. C. Rep., 20, cited and affirmed and the distinction made between requirements of mere loading points serving as described in that case, and the more extensive requirements for general merchandising is done and the products of the line treated for shipment, and coal, lumber, and other commodities supply local needs. *Cedar Rapids & Iowa City Ry. & Co.* 250.

The conclusions announced by the Commission in the August 16, 1905, are affirmed, and the rates therein held to be still excessive and unreasonable. *Cattle Ra M., K. & T. Ry. Co. et al.* 418.

Banner Milling Company case controlling. Thornton D., L. & W. R. R. Co. et al. 37.

Washburn-Crosby Co. v. Erie R. R. Co. et al. 38.

Washburn-Crosby Co. v. L. V. R. R. Co. 39.

Cosmopolitan Shipping Company case followed. Lykes S. S. Line v. Commercial Union et al. 310.

Haines case controlling. Gentry v. C., R. I. & P. Ry. Co. et al. 214, 219, 220, 222, 223, 224.

Northern Central Railway Company case followed. Detroit Chemical Works v. Erie R. R. Co. et al. 363.

Party-rate case followed. Field v. So. Ry. Co. et al. 298.

PREFERENCE OR ADVANTAGE.

Intermediate rate which does not permit disadvantageous competition from point beyond does not create undue preference. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

American Asphalt Assn. v. Uintah Ry. Co. 196.

Traer v. C. & A. R. R. Co. et al. 451.

PRICE.

Effect of rate on. *Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co. et al.* 418.

PRIVATE CARS.

While the right to use private cars may doubtless be denied to shippers by appropriate legislation, in the absence of a specific enactment to that effect the Commission is not prepared to say that their use in itself is unlawful; but if their use results under a given set of circumstances in an unlawful advantage to their owners and an unlawful disadvantage to other shippers, a question is presented which under existing legislation is within the control of the Commission and may be made the basis of such relief as the facts may justify. *Ruttle et al. v. P. M. R. R. Co.* 179.

Must be counted in distribution to mines. *Traer v. C. & A. R. R. Co. et al.* 451.

Subject to demurrage. *In re Demurrage on Privately Owned Tank Cars*, 378.

PROCEDURE.

Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 329.

Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al. 418.

Chandler Cotton Oil Co. v. Ft. S. & W. R. R. Co. 473.

Field v. So. Ry. Co. et al. 298.

Merchants' Traffic Asso. v. N. Y., N. H. & H. R. R. Co. et al. 225.

PROPORTIONAL RATES.

From points west of Missouri River to St. Louis. *Traffic Bureau, etc., of St. Louis v. Mo. Pac. Ry. Co. et al.* 11.

Kansas City to Cape Girardeau. *North Brothers v. St. L. & S. F. R. R. Co.* 152.

Kansas City to Little Rock on bran. *Marshall Michel Grain Co. v. Mo. Pac. Ry. Co.* 566.

PROTEST.

At time of payment of freight money not necessarily prerequisite for maintaining action for reparation. *Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al.* 329.

PUBLIC INTEREST.

Petition of complainant asking for an order requiring defendant to reestablish its station at Elder, Okla. (formerly Indian Territory), denied, because the interest of the general public does not require it and such reestablishment

would be an unnecessary burden upon defendant. *Edd* R. R. Co. 103.

Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co.
In re Released Rates, 550.

Traer v. C. & A. R. R. Co. et al. 451.

No official duty requiring investigation, it is refused. R. R. Co. et al. 125.

PULP WOOD.

Rates on. *Rhineland Paper Co. v. N. Pac. Ry. Co.*

RATES.

See also ABSORPTION; ADVANCES; BASING RATES; BIFICATION; CLASS RATES; COMBINATION RATES; COMPARISON; COMPETITION; CONCESSION; CONDITIONAL RATES; CRIMINATION; DISTANCE; DIVISIONS; EMERGENCY RATES; EX LAKE RATES; EXPRESS RATES; GRADED RATES; INLAND RATES; INDUSTRIAL RATES; INLAND CARRIAGE; INTERTRANSIT; JOBBERS' RATES; JOINT RATES; LAKE AND RIVER RATES; MANUFACTURERS' RATES; MEASURE OF RATES; MILLING RATES; OCEAN RATES; PAPER RATES; PARTY RATES; PROPORTIONAL RATES; REASONABLE RATES; RETORTIVE RATES; RELEASED RATES; STATE RATES; SUSPENSE CHARGES; TERRITORIAL RATES; THROUGH AND LOCAL RATES; ZONE RATES.

The Commission does not approve the practice of publishing rates with a clause under which they expire after a certain period of time, posing of enabling the Commission to do justice in such cases, will hereafter require in effect for a definite period of time to be designated. *Hayes Co. v. I. C. R. R. Co. et al.* 16.

Defendant's regulations as to contents of packages and weights have, in the past, been disregarded by the carrier, resulting in charges less than provided in the tariff. Upon correction of those irregularities the carrier's rate was unreasonable and reparation was demanded. It is not unreasonable, and that where a shipper has incurred loss on account of his own and carrier's irregularities can not be made the basis for an award. *Bannon v. Southern Express Co.* 51.

Accepting less than published, no presumption that the carrier is liable. *Bruhm et al. v. N. Pac. Ry. Co. et al.* 501.

Based on value. A carrier may lawfully establish a rate for a specific commodity and graduated reasonableness. These rates must be applied in good faith, regard being had to the property offered for shipment. In re Released Rates.

Disagreeing on divisions—defendants increased rate. *W. M. J. & K. C. R. R. Co. et al.* 504.

Insufficient for carrier justifying rate to assert its liability. *Reynolds v. Southern Express Co.* 536.

Ten-car lots of coal. *Nebraska State Railway Co. v. B. & M. Ry. Co.* 349.

Rail and lake. *Wyman, Partridge & Co. v. B. & M. Ry. Co.*

Rail and water. Railroad Commission of Kentucky *v. L. & N. R. R. Co.* et al. 300.

Bovaïrd Supply Co. *v. A., T. & S. F. Ry. Co.* et al. 56.

REASONABLE RATES.

A rate of 75 cents per 100 pounds on rope in carloads from San Francisco, Cal., to Independence, Kans., is not shown to be unreasonable. Bovaïrd Supply Co. *v. A., T. & S. F. Ry. Co.* et al. 56.

Rates between other points outside the present State of Oklahoma and points within that State held not unreasonable. Haines *v. C., R. I. & P. Ry. Co.* et al. 214.

The record fails to show that the rates in question are, under present conditions, unreasonable in and of themselves or that the circumstances and conditions under which the traffic is handled to and from Evansville are so substantially similar to those under which traffic is handled to and from Owensboro and Henderson as to make the charging of higher rates to and from the last-mentioned points unjustly discriminatory as compared with the rates applying between Evansville and the same points in Trunk Line and Central Freight Association territories. Complaint dismissed. Railroad Commission of Kentucky *v. L. & N. R. R. Co.* et al. 300.

It may be laid down as a general rule admitting of no qualification that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the service has the right to have it moved and to have reasonable rates established for the movement, regardless of the fact that the revenues of the carrier may be reduced by reason of his competition with other shippers in the distant markets; and he has the right also to have the benefit of through routes and reasonable joint rates to such distant markets if no "reasonable or satisfactory" through routes already exist. Cardiff Coal Co. *v. C., M. & St. P. Ry. Co.* et al. 460.

In determining whether the present charges of the defendants are reasonable, inquiry must be had into the character of the business, the amount of capital required for its conduct, the hazard involved, and, especially, the profits which these companies are now making under the rates attacked. Kindel *v. Adams Express Co.* et al. 475.

Defendants' banana rates from Mobile and New Orleans to Kansas City and adjacent points are not found to be unreasonable. Topeka Banana Dealers' Asso. *v. St. L. & S. F. R. R. Co.* 620.

Complaint challenged reasonableness of 8-cent rate on pulp wood, Duluth, Minn., Rhinelander, Wis., and rate adjustment on paper from Rhinelander to points east of Mississippi River, whereby Rhinelander is charged rates 2 cents in excess of those applying from the Fox River district in Wisconsin. During the proceeding the 8-cent rate on pulp wood was reduced to 6.95 cents; *Held*, That the reduced rate on pulp wood is not shown to be excessive. Rhinelander Paper Co. *v. N. Pac. Ry. Co.* et al. 633.

Defendants' rate of \$3.35 per ton of 2,000 pounds on coke in carloads from the Trinidad coal and coke district, in Colorado, to Amarillo, Tex., is excessive and unreasonable and should not exceed \$2.90 per ton, the rate now in force for the transportation of soft coal between the same points. Amarillo Gas Co. *v. A., T. & S. F. Ry. Co.* et al. 240.

Cream. Columbia, Tenn., to Jacksonville, Fla., by express not to exceed \$2.75 per 10 gallons. Reynolds *v. Southern Express Co.* 536.

Enameled brick. Cheltenham, Mo., to New Iberia, La., 30 cents per 100 pounds. Hydraulic Press Brick Co. *v. St. L. & S. F. R. R. Co.* et al. 342.

Knit goods. Seaboard to Wichita via Galveston, \$1.64½. *Johnston & Larli Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al.* 388.

Mixed carloads mineral water and beer not unlawful. *Milwaukee-Wauke Brewing Co. v. C., M. & St. P. Ry. Co. et al.* 28.

Multigraphs 1½ times first class. *Forest City Freight Bureau v. A., T. S. F. Ry. Co. et al.* 295.

Per se. No evidence was introduced tending to show that the rate charged and collected was unreasonable and unjust *per se*. Complaint dismissed. *Jensen Canning Co. v. C. & N. W. Ry. Co. et al.* 286.

Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et al. 605.

Phillips-Trawick-James Co. et al. v. S. P. Co. et al. 644.

Rhineland Paper Co. v. N. P. Ry. Co. et al. 633.

Pecos Mercantile Co. v. A., T. & S. F. Ry. Co. et al. 173.

Reparation requires reasonable rate to be first passed upon. *Baer B Mercantile Co. v. Mo. Pac. Ry. Co. et al.* 329.

Banner Milling Co. v. N. Y. C. & H. R. R. Co. 31.

Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co. et al. 418.

Frye & Bruhn et al. v. N. P. Ry. Co. et al. 501.

Kindel v. Adams Express Co. et al. 475.

Larsen Canning Co. v. C. & N. W. Ry. Co. et al. 286.

Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

Miller Walnut Co. v. A., T. & S. F. Ry. Co. et al. 43.

Ocheltree Grain Co. v. St. L. & S. F. R. R. Co. 46.

Phillips-Trawick-James Co. et al. v. S. P. Co. et al. 644.

REBATES.

Practices of certain carriers relative to interstate shipments declared illegal and criminal prosecutions requested to be instituted. In re Rates, Accounts, etc., of Carriers, etc., 123.

Evidence of rebates allowed in the past when offered by a shipper who unlawfully received them is not competent to show that the published rate is unreasonable. *Frye & Bruhn et al. v. N. Pac. Ry. Co. et al.* 501.

The fact that defendants accepted, and complainant actually paid, less than the published rates, in violation and in defiance of law, raises no presumption that the published rate is unreasonable, but tends rather to raise a presumption that the defendants somewhere in their rate structure exacted from shippers other commodities rates that were unreasonably high. *Id.*

Stock issued for freight paid. *Lykes S. S. Line v. Commercial Union et al.* 310.

Leonard v. K. C. S. Ry. Co. et al. 573.

REDUCTION OF RATES.

Conceded, see CONCESSION.

Amarillo, Tex., from Trinidad, Colo. Coke rate of \$3.35 per ton of 2½ pounds, in carloads, made \$2.90 per ton, same as rate on soft coal between same points. *Amarillo Gas Co. v. A., T. & S. F. Ry. Co. et al.* 240.

Ashland, Tex., to Nash, Okla. Restoration of through route and joint through rate of 28½ cents on lumber, lath, and shingles in carloads. *Gentry A., T. & S. F. Ry. Co. et al.* 171.

Buffalo, N. Y., to Irvington, N. J. Flour rate of 11 cents per 100 pounds, carloads, reduced to 10 cents by application by defendant of proportional exlake rate. *Washburn-Crosby Co. v. Lehigh Valley R. R. Co.* 89.

Buffalo, N. Y., to Providence, R. I. Flour rate of 13 cents per 100 pounds made 12 cents by defendants' application of proportional exlake rate. *The Ton & Chester Milling Co. v. D., L. & W. R. R. Co. et al.* 37.

Buffalo, N. Y., to Unionville, Conn. Flour rate of 13 cents per 100 pounds made 12 cents by defendants' application of proportional exlake rate. *Washburn-Crosby Co. v. Erie R. R. Co. et al.* 38.

Cheltenham, Mo., to New Iberia, La. Enameled brick rate of 48 cents per 100 pounds reduced to 30 cents, carload minimum of 40,000 pounds. *Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al.* 342.

Chester, Va., to Columbus and other Ohio points. Rate of 18.3 cents per 100 pounds on lumber reduced to 17.5 cents. *Randolph Lumber Co. v. S. A. L. Ry. et al.* 601.

Chicago and Chicago points to Pacific coast points. Rate of 85 cents per 100 pounds on hardwood lumber reduced to 75 cents. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Chicago and Chicago points to Pacific coast terminals. Rate of 90 cents per 100 pounds, minimum 60,000 pounds, reduced to 80 cents. *Winter's Metallic Paint Co. v. A., T. & S. F. Ry. Co. et al.* 409.

Cleveland, Ohio, and Durham, N. H. Wire brushes and brooms, in cases, L. C. L., taken out of first class and put into third. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 109.

Columbia, Tenn., to Jacksonville, Fla. Rate of \$3.90 per 10 gallons reduced to \$2.75, including return of empties. *Reynolds v. Southern Express Co.* 536.

Denver from eastern points. Express basing rate of \$4 from Omaha to Denver made \$3.50, and of \$4.25 from Denver to Ogden made \$4. *Kindel v. Adams Express Co. et al.* 475.

Denver from St. Louis. Rate of \$6.47½ per 100 pounds on motor cycles to one and one-half times first-class rate in L. C. L. and first-class in C. L. *Merchants' Traffic Assn. v. A., T. & S. F. Ry. Co. et al.* 233.

Dragon, Utah, to Mack, Colo. Rate of \$10 per ton on gilsonite reduced to \$8. *American Asphalt Assn. v. Uintah Ry. Co.* 196.

Gallatin, Tenn., from New Orleans. Rate of 31 cents per 100 pounds on sugar, C. L., reduced to 25 cents. *Payne-Gardner Co. v. L. & N. R. R. Co.* 638.

Goltry, Okla., from Kansas and Oklahoma coal mines. Rate of \$1.85 on slack coal, C. L., reduced to \$1.50. *Gentry v. C., R. I. & P. Ry. Co. et al.* 219.

Lincoln, Nebr., compared with Omaha. Rates on lumber, glass, salt, rice, egg-case fillers, and sugar from Kansas, etc., should not exceed those to Omaha, and rates on cement and paving brick should not exceed rate to Omaha by more than 1½ cents. *Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al.* 319.

Memphis, Tenn., to New Orleans. Rate of 12 cents on hardwood lumber reduced to 10 cents. *Thompson Lumber Co. v. I. C. R. R. Co. et al.* 657.

New Albany, Miss., to New England points, etc. Rates on furniture reduced as follows: New Albany to Baltimore, 63 cents to 58 cents; to Philadelphia, 64 cents to 58 cents; to New York, 66 cents to 61 cents, and to Boston, 71 cents to 63 cents. *New Albany Furniture Co. v. M., J. & K. C. R. R. Co. et al.* 594.

New England compared with New York. Rate on grain and grain products from Buffalo to Boston reduced from 13 cents to 12 cents. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 31.

Official Classification territory. Rate on masurite made lower by reducing classification from the first class in carloads and double first class in less than carloads to second class in carloads, minimum 20,000 pounds, and one and one-half times first class in less than carloads. *Masurite Explosive Co. v. P. & L. E. R. R. Co. et al.* 405.

Oklahoma City to Galveston for export. Rate of 26½ cents on walnut lumber reduced to 21½ cents. *Miller Walnut Co. v. A., T. & S. F. Ry. Co. et al.* 43.

A comparison of express rates in one locality with those in another is of much greater value than a similar comparison between freight rates, since the character of the business and the conditions under which it is transacted are more nearly the same. *Kindel v. Adams Express Co. et al.* 475.

The law contemplates relatively fair rates between different places, and the dealer located in a small town is entitled to a reasonable adjustment which will enable him to compete on an equitable basis with dealers at trade centers enjoying the benefit of competitive rates. *Payne-Gardner Co. v. L. & N. R. R. Co.* 638.

Anthony and Wichita, etc. *Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et al.* 605.

Brick, enameled and press. *Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al.* 342.

Cedar Rapids and Coralville. *Cedar Rapids & Iowa City Ry. & Light Co. v. C. & N. W. Ry. Co.* 250.

Chicago and Kansas City. *Topeka Banana Dealers' Assn. v. St. L. & S. F. R. R. Co. et al.* 620.

Coal, Rock Springs to Smeed and Cheyenne. *Nebraska State Railway Commission v. U. P. R. R. Co.* 349.

Comparisons between commodities. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Detroit, on pyrites compared with other western towns. *Detroit Chemical Works v. Northern Central Ry. Co. et al.* 357.

Domestic shipments and imported glass. *Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al.* 87.

East and west bound. *Frye & Bruhn et al. v. N. Pac. Ry. Co. et al.* 501.

Nashville and Hopkinsville. *Phillips-Trawick-James Co. et al. v. Southern Pacific Co. et al.* 644.

New York from Buffalo compared with Minneapolis. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 31.

Washburn-Crosby Co. v. *Pa. R. R. Co.* 40.

Ohio River rates, local and for beyond. *Reliance Textile & Dye Works v. Southern Ry. Co. et al.* 48.

Oklahoma City compared with Kansas City. *Miller Walnut Co. v. A., T. & S. F. Ry. Co. et al.* 43.

Paper, Rhinelander to points east of Mississippi River compared with Fox River district to same points. *Rhinelander Paper Co. v. N. Pac. Ry. Co. et al.* 633.

Pecos and El Paso. *Pecos Mercantile Co. v. A., T. & S. F. Ry. Co. et al.* 173.

Weir to Goltry, on coal, compared with other sections. *Gentry v. C., R. I. & P. Ry. Co. et al.* 214.

REPARATION.

Complainant is entitled to recover from defendants the sum of \$3,071.56, as reparation for unjust and unreasonable charges on specified shipments of cross-ties made under the rates complained of in this case. *Holcomb-Hayes Co. v. I. C. R. R. Co. et al.* 16.

Reparation will only be allowed from August 29, 1906, when the complainant presented its petition for further proceedings under the amended act. *Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co. et al.* 418.

Rate of 34 cents per 100 pounds exacted by defendant for the transportation of cattle from Leon, Kans., to Chicago, Ill., found unreasonable to the extent of

2½ cents per 100 pounds, and reparation in the sum of plaintiff. *Morti v. C., M. & St. P. Ry. Co.* 513.

Complainant is entitled to recover from defendant reparation for unjust and unreasonable charges on spec made under the rate complained of in this case. *Butte R. R. Co. et al.* 521.

Rate of 55 cents per ton exacted by defendant on loading for transportation of stable manure from Wash Md., found unreasonable to the extent it exceeded 40 weight of shipment, and reparation in the sum of \$17.50. *White Water Farms Co. v. P., B. & W. R. R. Co.* 526.

Complainants are entitled to recover from defendant report as reparation on account of the nonabsorption Kansas City on specified shipments of wood made un appearing in this case. *Wellington et al. v. St. L. & S. I*

The power of the Commission to award reparation division of rates between connecting carriers. Claim cognizable by the Commission. It can not therefore or for services performed nor for a debt due one carrier joint rates for a joint service. Such claims rest upon plied. The jurisdiction of the Commission and its au limited to reparation for damages caused by violation act to regulate commerce. *La Salle & Bureau County Ry. Co.* 610.

The petition questions the reasonableness of the pounds applied by defendant to the transportation o New Orleans, La., to Gallatin, Tenn., and alleges that t discrimination against dealers at Gallatin in favor of Nashville, Tenn., and Bowling Green and Louisville, on account of the exaction of this alleged unreasonable present rate of 31 cents per 100 pounds applying on to Gallatin is unreasonable and unjust, and that t charged for this transportation in the future should no pounds. *Payne-Gardner Co. v. L. & N. R. R. Co.* 638.

Reparation is allowed in this case only from the dat plaint. *Burgess et al. v. Transcontinental Freight Bu*

Amount above reasonable rate. *Detroit Chemical W Ry. Co. et al.* 357.

Detroit Chemical Works v. Erie R. R. Co. et al. 305

Morti v. C., M. & St. P. Ry. Co. 513.

Carload weights. *Hydraulic Press Brick Co. v. S et al.* 342.

Exaction of unlawful storage and insurance. *Engla Co.* 614.

Fitting cattle cars for hay, denied. *Laning-Harris St. L. & S. F. R. R. Co. et al.* 148.

Hay, Kansas City to Cape Girardeau. *North Bros Co.* 152.

In excess of lawful charge. *Laning-Harris Coal & Co. et al.* 154.

Money damages alleged by complainants not prover to warrant Commission in making any award. *Re Southern Ry. Co.* 440.

No evidence, inference abandoned. *Powhatan Coal & Coke Co. v. N. & W. Ry. Co.* et al. 69.

On unreasonable advances. *New Albany Furniture Co. v. M., J. & K. C. R. R. Co.* et al. 594.

Overcharge on farm machinery. *Minneapolis Threshing Machine Co. v. C., R. I. & P. Ry. Co.* 128.

Overcharge on party rate tickets. *Koch Secret Service v. L. & N. R. R. Co.* 523.

Question reserved. *Goff-Kirby Coal Co. et al. v. B. & L. E. R. R. Co.* 383.

Reparation granted where delivering carrier concedes it is reasonable and stipulates that an order of reparation be directed against it alone. *American Grocer Co. v. P., C., C. & St. L. Ry. Co.* et al. 293.

Shipments of cross ties, Barnett to McAlester, Ind. T.; dismissed for want of jurisdiction. *Hussey v. C., R. I. & P. Ry. Co.* 366.

Speculative damages not allowed. *Frye & Bruhn et al. v. N. Pac. Ry. Co.* et al. 501.

RETURN SHIPMENTS.

Provisions in tariff at half rates. *Minneapolis Threshing Machine Co. v. C., R. I. & P. Ry. Co.* 128.

RISK.

As condition in fixing rates. In re Released Rates, 550.

Express business for loss or damage in transit. *Kindel v. Adams Express Co.* et al. 475.

Of cattle. *Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co.* et al. 418.

Transportation of explosives. *Masurite Explosive Co. v. P. & L. E. R. R. Co.* et al. 405.

Transportation of nitrate of soda. *Fort Smith Traffic Bureau v. St. L. & S. F. R. R. Co.* et al. 651.

RICE.

Rates on. *Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co.* et al. 605.

Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

ROPE.

Rate on San Francisco to Independence, Kans. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co.* et al. 56.

ROUTING.

Complainant directed that its shipments of two carloads of canned vegetables from Green Bay, Wis., to Washington, Ohio, move via a certain route over which there was no joint through rate, and the sum of the locals was applied. The goods might have been shipped by complainant between these points over a route having a joint rate less than the sum of the locals. *Held.* that the initial carrier was bound to observe the instructions of the consignor in this case. It was also bound to collect the published rate applicable to the designated route and entails no liability under the law for so doing. *Larsen Canning Co. v. C. & N. W. Ry. Co.* et al. 286.

Complainant's direction. *Hollis Stedman & Sons v. C. & N. W. Ry. Co.* et al. 167.

RYE.

Rates, storage, and insurance on. *England & Co. v. B. & O. R. R. Co.* 614.

SALT.

Rates on. *Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al.* 319.

SECTIONS OF THE ACT CONSTRUED.

Section 1. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Section 2. *Id.*

Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al. 87.

Section 3. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al. 87.

Wagner, Zagelmeyer & Co. v. D. & M. Ry. Co. et al. 160.

Section 4. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Johnston & Larimer Dry Goods Co. et al. v. A., T. & S. F. Ry. Co. et al.

Section 6. *Cosmopolitan Shipping Co. v. Hamburg-American Packe et al.* 266.

Section 8. *Mo. & Kan. Shippers' Asso. v. A., T. & S. F. Ry. Co. et al.* 41.

Section 13. Under section 13 of the act a carrier has a definite *locus tentii* in order to determine whether it will yield to the demand made on it; and the carrier has the right to have the complaint so stated afford it the necessary information to enable it to determine whether to refuse the authority of the Commission to satisfy the demand or to make a final answer. When the demand is made on behalf of unnamed shippers and shipments that are not specified with reasonable particularity, this opportunity is not open to the carrier. *Id.*

Section 15. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co. et al.* 460.

Section 20. *In re Released Rates*, 550.

SHRINKAGE.

Bananas in transit. *Topeka Banana Dealers' Asso. v. St. L. & S. F. Co. et al.* 620.

Hogs in transit. *Frye & Bruhn et al. v. N. Pac. Ry. Co. et al.* 501.

SIDETRACKS.

Private. *In re Demurrage on Privately Owned Tank Cars*, 378.

Leonard v. K. C. S. Ry. Co. et al. 573.

SINGLE DECK CARS.

Frye & Bruhn et al. v. N. Pac. Ry. Co. et al. 501.

SNAPPED CORN.

Rates on. *Ocheltree Grain Co. v. C., R. I. & P. Ry. Co.* 238.

SPECIAL SERVICE.

Banana traffic. *Topeka Banana Dealers' Asso. v. St. L. & S. F. R. I et al.* 620.

Express matter handled on passenger trains. *Kindel v. Adams Express et al.* 475.

STATE RATES.

Reliance Textile & Dye Works v. Southern Ry. Co. et al. 48.

Hollis Stedman & Sons v. C. & N. W. Ry. Co. et al. 167.

Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al. 329.

Hussey v. C., R. I. & P. Ry. Co. 366.

STATE ROAD.

A railroad company whose road lies entirely within the limits of a State becomes subject to the act to regulate commerce by participating through movement of traffic from a point in another State to a point in

State within which it is located, although its own service is performed entirely within the latter State. *Baer Bros. Mercantile Co. v. Mo. P. Ry. Co. et al.* 329.

Under the act to regulate commerce, as amended June 29, 1906, a carrier by railroad operating entirely within a State becomes subject to the provisions of the act if it engages in interstate transportation, although it has entered into no arrangement with any other carrier by railroad or water for the movement of traffic between points upon its line and points without the State. *Leonard v. K. C. S. Ry. Co. et al.* 573.

STATION.

Commission declines to require location. *Eddleman et al. v. Midland Valley R. R. Co.* 103.

Complainants prayed for an order requiring defendant to reestablish facilities at Fanshawe, Okla., for the receipt and delivery of interstate traffic, and at the hearing defendant agreed to put in certain facilities satisfactory to complainants, and it appearing that the public interest would be subserved by the fulfillment of this understanding, the complaint is dismissed without prejudice. *Lewis et al. v. C., R. I. & P. Ry. Co.* 138.

STEAMBOAT LINES.

Whether a satisfactory through route exists depends upon the facts and circumstances of each case. While the three steamboats of the Graham & Morton Line, with which the defendant now has through routes and joint rates for the transportation of fruit from certain points in the State of Michigan by rail to Benton Harbor and thence across Lake Michigan to Chicago, can doubtless carry all the fruits produced in the territory in question. Its ability satisfactorily to handle the traffic is to be measured by the least adequate of its facilities. And if it can not promptly deliver the traffic over its wharf at Chicago, and thus causes delays that result in financial losses to shippers, the through route by that line can not be said to be satisfactory. *Benton Transit Co. v. B. H.-St. J. Ry. & L. Co.* 542.

Leonard v. K. C. S. Ry. Co. et al. 573.

STEAMSHIP LINE.

Act provides no machinery of enforcement as to transatlantic lines. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.* 266.

Lykes Steamship Line v. Commercial Union et al. 310.

STIPULATIONS.

Holcomb-Hayes Co. v. I. C. R. R. Co. et al. 16.

Merchants' Traffic Asso. v. Pacific Express Co. 131.

American Grocer Co. v. P., C., C. & St. L. Ry. Co. et al. 203.

Laning-Harris Coal & Grain Co. v. St. J. & G. I. Ry. Co. 317.

Morti v. C., M. & St. P. Ry. Co. 513.

In re Released Rates, 550.

STOCKHOLDERS.

The powers conferred upon the Commission by the act were not intended to be exercised for the purpose of ascertaining whether an individual stockholder has been wronged by such transactions as those in question in this case. The investigation which the complainant desires is not required by considerations of public interest or the proper discharge of official duties and should therefore be refused. *Manning v. C. & A. R. R. Co. et al.* 125.

STOCK YARDS.

Union Stock Yards and Transit Co. Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al. 418.

STONE.

Rates and weight. *Romona Oolitic Stone Co. v. Vandalla R. R. Co.* 1
Romona Oolitic Stone Co. v. C., I. & L. Ry. Co. 569.

A low rate on stone paving blocks was made to permit shippers to c with producers in other States, upon the condition, which was expressed tariff, that the minimum carload weight should be the marked capacity car. Complainant knew the weight of a cubic foot of paving blocks and counted the number placed in a car; never specified capacity of car d although, upon request, could have had cars ranging from 40,000 to 100,000 capacity; always had sufficient material to load to marked capacity received, which could have been easily loaded to and beyond that capacity from October 1, 1904, to November 30, 1907, found no difficulty in load marked capacity of the cars received. Upon this record and under the c stances the regulation making the minimum carload weight the marked ity of the car was not unjust nor unreasonable, and reparation based the denied. *Georgia Rough & Cut Stone Co. v. Ga. R. R. Co. et al.* 401.

STORAGE IN TRANSIT.

By their tariffs defendants offer free storage in transit at Duluth, Mi Superior, Wis., on both east and west bound lake freight during the close son of navigation. The practice is for inland shippers to bring their tr the warehouses at such ports before the close of navigation, where th held in free storage by defendants until ordered forward by rail at the b of the through rate from eastern points of origin. The Duluth merchant ing their business houses at the point where the storage is given, are con to pay storage and also dockage and switching charges. Complainant t that this business deprives Duluth of its advantage of location at the b the lakes and operates to transfer such advantage to inland points. It a that the privilege is open to all shippers alike and that the practice is no fined to defendants, but is forced by competition of other lines ope through other lake ports; *Held*, That the record in this case does not t time justify condemnation of a practice in which so many carriers and sh not parties to the record are interested. *Commercial Club of Duluth v. P Ry. Co. et al.* 288.

England & Co. v. B. & O. R. R. Co. 614.

SUGAR.

Rates on. *Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co. et s*
Payne-Gardner Co. v. L. & N. R. R. Co. 638.

Lincoln Commercial Club v. C., R. I. & P. Ry. Co. et al. 319.

SULPHURIC ACID.

Product of Pyrites. *Detroit Chemical Works v. Northern Central R et al.* 357.

Detroit Chemical Works v. Erie R. R. Co. et al. 363.

SUSPENSION OF RATES.

During close of navigation not cancellation. *Benton Transit Co. v. I St. J. Ry. & L. Co.* 542.

SWITCHING.

Under the circumstances of this case no order can properly be made i ing defendant to publish in its tariffs any allowance for transportati freight by complainant from and to La Salle Junction, Ill., or to pay con ant allowances for specific service performed between certain dates. *La & Bureau County R. R. Co. v. C. & N. W. Ry. Co.* 610.

- New Albany Furniture Co. v. M. J. & K. C. R. R. Co. et al. 594.
 Absorption not required. Mo. & Kan. Shippers' Assn. v. A. T. & S. F. Ry. Co. et al. 411
 Absorption of. Leonard v. K. C. S. Ry. Co. et al. 573.
 Refused when coming from other lines. Cardiff Coal Co. v. C., M. & St. P. Ry. Co. et al. 460.
 Violation of tariff. Wellington et al. v. St. L. & S. F. R. R. Co. 534.
 With charge. Wagner, Zagelmeyer & Co. v. D. & M. Ry. Co. et al. 160.

TANK CARS

- Re Demurrage on Privately Owned Tank Cars, 373.

TARIFFS.

The carrier should publish, or post for convenient inspection, at frequent and regular intervals, the ratings of the various mines and the car tonnage received by them within the period covered by the report; in cases where commercial mines have received more or less than their equitable pro rata of the car tonnage during any particular period, the overplus or shortage for such mines should be adjusted, as far as possible, within the period next succeeding, and such correction should be shown in the subsequent reports. Royal Coal & Coke Co. v. Southern Ry. Co. 440.

Tariffs which apply rates upon commodities according to their use are improper. The carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put. The duty of a common carrier is to transport commodities at its tariff rates and on equal conditions for all. Ft. Smith Traffic Bureau v. St. L. & S. F. R. R. Co. et al. 651.

The concurrent existence of two separate and distinct rates on the same commodity is condemned when the traffic moves over the same route in the same direction, between the same points, and the carriers, by their published tariffs, assume to charge one rate or the other according to the ultimate use to which the commodity is to be put. Id.

Administrative ruling for transit privileges. Commercial Club of Duluth v. N. P. Ry. Co. et al. 288.

Allowances not specified can not be paid. La Salle & Bureau County R. R. Co. v. C. & N. W. Ry. Co. 610.

Designated, to be filed. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al. 266.

Every service offered must have its rate. Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al. 1.

Express rates on fish. Bannon v. Southern Express Co. 516.

Misleading rules and regulations mischievous. In re Released Rates, 550.

Multigraphs sometimes used for printing. Forest City Freight Bureau v. A., T. & S. F. Ry. Co. et al. 295.

Obscure and general clauses in voluminous tariffs for lowest combinations result in gross misapplication of the tariffs. Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al. 342.

Omission of distance scale with commodity tariff by express company. Merchants' Traffic Assn. v. Pacific Express Co. 131.

Practice of short-term rates for particular case not approved. Holcomb-Hayes Co. v. I. C. R. R. Co. et al. 16.

Proportional rates. Marshall Michel Grain Co. v. Mo. Pac. Ry. Co. 566.

Provision as to cargo of grain. England & Co. v. B. & O. R. R. Co. 614.

Provisions of, should be fair and unambiguous and free from suspicion of illegality. In re Released Rates, 550.

Return shipments. Minneapolis Threshing Machine Co. v. C., R. I. & Co. 128.

Ship's side. Ft. Smith Traffic Bureau v. St. L. & S. F. R. R. Co. et al.

Short notice. Merchants' Traffic Assn. v. Pacific Express Co. 131.

Transportation of hogs—transcontinental. Frye & Bruhn et al. v. N. Ft. Co. et al. 501.

Western coal rates. Laning-Harris Coal & Grain Co. v. St. J. & G. L. Co. 317.

TERMINAL CHARGES AND FACILITIES.

The rates prescribed to Chicago are held to be sufficient to carry a delivery to the Union Stock Yards, and the imposition of any terminal charge in excess of \$1 is declared unreasonable. Cattle Raisers' Assn. of Texas v. M., K. & Ry. Co. et al. 418.

Allowances for services not specified in tariffs can not be ordered. La. & Bureau County R. R. Co. v. C. & N. W. Ry. Co. 610.

The second paragraph of section 3 of the act, providing that no carrier be required to give the use of its tracks and terminal facilities to any other carrier engaged in like business, has no application to such a state of facts as this record presents. From no point of view is this a proceeding to acquire the use of one line by another; it is simply an effort on the part of complainant to reach certain interstate points with its coal. Cardiff Coal Co. v. C., M. & Ry. Co. et al. 460.

TERRITORIAL RATES.

Johnston v. C., R. I. & P. Ry. Co. 214.

Gist v. C., R. I. & P. Ry. Co. et al. 214.

Gentry v. C., R. I. & P. Ry. Co. et al. 257.

Hussey v. C., R. I. & P. Ry. Co. 366.

The provision of the act to regulate commerce applying to carriers transporting property "from one place in a territory to another place in the territory," so far as it related to the territory of Oklahoma, expired by its force on November 16, 1907, when Oklahoma was admitted as a State. Complaint dismissed for want of jurisdiction. Chandler Cotton Oil Co. v. Ft. W. R. R. Co. 473.

THEATRICAL COMPANIES.

Field v. Southern Ry. Co. et al. 298.

THROUGH AND LOCAL RATES.

Generally joint through rates lower than locals. Laning-Harris Coal & Co. v. Mo. P. Ry. Co. et al. 154.

Coomes & McGraw v. C., M. & St. P. Ry. Co. et al. 192.

Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al. 342.

THROUGH BILLING.

Evidence of arrangement for continuous carriage. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al. 266.

Rule not to issue unless steamer in sight. Thompson Lumber Co. et al. v. L. C. R. R. Co. et al. 657.

THROUGH RATES.

Complaint alleges unreasonable through rates on cotton seed from point of origin to Fort Smith and Western Railroad to Memphis, Tenn. Class A rates therefor were admitted to be unreasonable, and defendant, by leave, amended its answer by stating that it had established through rates equal to the sum

the local rates of the several carriers, based on Fort Smith. Later, and before the case had been submitted, defendant Fort Smith and Western Railroad increased its local rates, and still later, and before decision had been rendered, filed a tariff of through rates carrying corresponding increases in rates. *Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al. 1.*

This rate to Denver is not a joint through rate, but is made up of the local rate from New England to St. Louis plus the rate from St. Louis to Denver, or in some cases from St. Louis to Kansas City and from Kansas City to Denver. The Commission might perhaps order a reduction of these several locals to such an extent as to bring the entire rate within the figure named by us; but the Commission would be passing upon a through rate from New England to Denver, and no such rate is now in existence. The proper method to follow in cases like this, where no joint rate exists, is to cite before the Commission the proper defendants and pray for the establishment of a through route and joint rate. Upon a petition of that sort the Commission has power to do justice both to Denver and between the different carriers participating in the transportation. *Merchants' Traffic Asso. v. N. Y., N. H. & H. R. R. Co. et al. 225.*

Canceled. *Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al. 418.*

Strictly local shipment, and through rate not applicable. *Laning-Harris Coal & Grain Co. v. Mo. Pac. Ry. Co. et al. 154.*

THROUGH ROUTES.

On complaint of failure of defendants to establish a through route and joint rate on lumber, lath, and shingles from Ashland, Tex., to Nash, Okla., it appeared that there formerly existed joint rates over two established routes between these points, but that they have been recently canceled; *Held*, That there is at the present time no satisfactory through route or joint rate for the shipment of such commodities between said points, and that a joint through rate of 28½ cents per 100 pounds should be established over a through route specified herein. *Gentry v. A., T. & S. F. Ry. Co. et al. 171.*

Upon complaint showing failure of defendants to establish through routes and joint rates for transportation of cotton seed, in carloads, from certain points on Midland Valley Railroad in Oklahoma to Little Rock, Ark.; *Held*, That failure of defendants to establish such routes and rates unduly discriminates against complainant in favor of manufacturers at Fort Smith, Ark., and Muskogee, Ind. T. *Merchants' Freight Bureau of Little Rock, Ark., v. Midland Valley R. R. Co. et al. 243.*

While the Commission's power to establish a through route and joint rate is limited to particular cases where a reasonable or satisfactory through route does not already exist, yet such power is not confined to cases where enforcement of other provisions of the regulating statute is sought. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co. et al. 460.*

Complainant asks for the establishment of through routes and joint rates over the St. Paul in connection both with the Wabash Railroad and the Chicago, Indiana & Southern. If reasonable and satisfactory through routes existed to the points in question over one of those connecting lines, it would not be competent for the complainant to ask for the establishment of through routes to the same points over the other connecting line. Nor does the Commission regard it as competent, unless there are special circumstances justifying it, for a shipper, in the absence of any reasonable or satisfactory through routes, to ask for the establishment of such routes over two connecting lines. *Id.*

Authority to establish only when none satisfactory in existence. *Hollis Stedman & Sons v. C. & N. W. Ry. Co. et al. 167.*

Carriers forming not independent and distinct entities. *Baer Br cantile Co. v. Mo. P. Ry. Co. et al.* 320.

Continuous service. *Memphis Freight Bureau v. Ft. S. & W. R. et al.* 1.

Divisions of joint rate need not be published. *Cosmopolitan Shippin Hamburg-American Packet Co. et al.* 266.

Leave to amend complaint to cover through routes denied. *La Salle reau County R. R. Co. v. C. & N. W. Ry. Co.* 610.

No satisfactory route in operation—through route order. *Cedar R Ia. City Ry. & L. Co. v. C. & N. W. Ry. Co.* 250.

Order establishing through routes. *Cardiff Coal Co. v. C. & N. W. et al.* 471.

Partly by railroad and partly by water. *Leonard v. K. C. S. et al.* 573.

Satisfactory through route already supplied. *Chicago & Milwaukee R. R. Co. v. I. C. R. R. Co. et al.* 20.

Traffic not promptly delivered, route can not be said to be satisfactory. *ton Translt Co. v. Benton Harbor-St. Joe Ry. & L. Co.* 542.

TON PER MILE RATES.

Bananas from New Orleans. *Topeka Banana Dealers' Asso. et al. v. S. F. R. R. Co. et al.* 620.

Coal, Rock Spring. *Neb. State Ry. Commission v. U. P. R. R. Co.* 341.

First class New York and Chicago. *Railroad Commission of Kent L. & N. R. R. Co. et al.* 300.

Furniture to Atlantic ports. *New Albany Furniture Co. v. M., J. & R. R. Co. et al.* 594.

Iron pyrites westward. *Detroit Chemical Works v. Northern Cent Co. et al.* 357.

Less in Official than in Western territory. *Rhineland Paper Co. v. Ry. Co. et al.* 633.

Live stock. *Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et*

Lumber east to west between Chicago and Pacific coast points. *Bu al. v. Transcontinental Freight Bureau et al.* 668.

Lumber on Illinois Central. *Thompson Lumber Co. et al. v. I. C. R. et al.* 657.

Prescribed by Commission higher than now in effect. *Haines v. C., P. Ry. Co. et al.* 214.

TRADE CENTER.

Commercial center with many commodities different from one with limited in variety. *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. et al.* 20.

More extensive requirements than one or more farms. *Cedar Rapids City Ry. & Light Co. v. C. & N. W. Ry. Co.* 250.

Recognition as trade center can not justify rates which result in undue erence. *Payne-Gardner Co. v. L. & N. R. R. Co.* 638.

TRANSFER.

At junction points. *Memphis Freight Bureau v. Ft. S. & W. R. R. al.* 1.

Cotton seed at Hartford to the Rock Island cars. *Merchants' Freight of Little Rock, Ark., v. Midland Valley R. R. Co.* 243.

Hay in private cars. *Ruttle et al. v. P. M. R. R. Co.* 179.

Re Rates, Practices, etc., of Carriers subject to the Act, 212.

ULTRA VIRES.

Doctrine as related to railroad hotels, etc., not passed upon. *American Asphalt Asso. v. Uintah Ry. Co.* 196.

UNDERCHARGE.

Upon discovery that shipments have through mistake been moved at an unlawful rate the carrier should forthwith demand and the shipper forthwith pay the difference between such unlawful rate and the legal rate applicable thereto. *Bovalrd Supply Co. v. A., T. & S. F. Ry. Co. et al.* 56.

Alleged. *Hydraulic Press Brick Co. v. A., T. & S. F. Ry. Co. et al.* 342.

UNIFORM ACCOUNTS.

System recently promulgated under statutory authority. *Cattle Raisers' Asso. of Texas v. M., K. & T. Ry. Co. et al.* 418.

UNIFORM BILL OF LADING.

Contains certain provisions similar to Western Classification. In re Released Rates, 550.

UNREASONABLE RATES.

The present rate of \$1.85 per ton on shipments of slack coal from Weir and Midway, Kans., to Goltry, Okla., is unreasonable and should not exceed \$1.50 per ton. *Haines v. C., R. I. & P. Ry. Co. et al.* 214.

Complaint alleges that rates charged by defendant for the transportation of coal from Rock Springs and Hanna, Wyo., to points in Nebraska are unreasonable. *Nebraska State Ry. Commission v. U. P. R. R. Co.* 349.

The rate of \$4.50 per ton applying on lump coal from Rock Springs and \$3.50 per ton from Hanna to points in Nebraska on the line of defendant between the Nebraska-Wyoming boundary and Grand Island, including the latter point and points on the branch line from Kearney to Callaway, Nebr., are unjust and unreasonable. Just and reasonable rates prescribed. *Id.*

The rate of \$3.32 per ton of 2,240 pounds on imported iron pyrites in carloads from New York to Detroit is now and was during the time it was in effect unreasonable and unjust, and should not exceed \$2.81 per ton. Reparation awarded. *Detroit Chemical Works v. Erie R. R. Co. et al.* 363.

A rate of 90 cents per 100 pounds, minimum 90,000 pounds, for the transportation of ground iron ore from Chicago and Chicago points to Pacific coast terminals is excessive, and should not exceed 60 cents per 100 pounds. *Winters Metallic Paint Co. v. A., T. & S. F. Ry. Co. et al.* 409.

Additional charge on unreleased shipment of 20 per cent unreasonable. In re Released Rates, 550.

Advanced rate from December, 1906, to February, 1907, excessive. *Ocheltree Grain Co. v. St. L. & S. F. R. R. Co.* 46.

Advanced rates unreasonable unless B. L. includes marine insurance. *Wyman, Partridge & Co. et al. v. B. & M. R. R. et al.* 258.

Advances condemned as unreasonable. *New Albany Furniture Co. v. M., J. & C. R. R. Co. et al.* 594.

Beer, Pueblo to Leadville, 45 cents. *Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. et al.* 329.

Brick, Cheltenham, Mo., to New Iberia, La. *Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co. et al.* 342.

Broom corn, through rates unreasonable as far as they exceed locals. *Coomes & McGraw v. C., M. & St. P. Ry. Co. et al.* 192.

Cattle, Leon, Kans., to Chicago, by 2½ cents per 100 pounds. *Morti v. C., M. & St. P. Ry. Co.* 513.

Cattle terminal charge above \$1 at Chicago Stock Yards. *Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co. et al.* 418.

Coke, C. L., Trinidad to Amarillo. *Amarillo Gas Co. v. A., T. & S. F. Ry. Co. et al.* 240.

Cottonseed, Fort Smith & Western R. R. to Memphis, through rat Memphis Freight Bureau *v. Ft. S. & W. R. R. Co. et al.* 1.

Cream, Columbia, Tenn., to Jacksonville. *Reynolds v. Southern Express Co.* 536.

Cross ties shipments, Tennessee to Illinois points. *Holcomb-Hayes Co. v. Cent. R. R. Co. et al.* 16.

Farm machinery, Dallas to Kansas City. *Minneapolis Threshing Machine Co., R. I. & P. Ry. Co.* 128.

Flour, Buffalo to New York. *Banner Milling Co. v. N. Y. C. & H. R. Ry. Co.* 31.

Glass fruit jars, Greenfield, Ind., to Calico Rock, Ark.—local rate from unreasonable. *American Grocer Co. v. P., C., C. & St. L. Ry. Co. et al.*

Grain and products, St. Louis to Little Rock. *Traffic Bureau, etc., of St. Louis v. Mo. Pac. Ry. Co. et al.* 11.

Hardwood lumber, Chicago to Pacific. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Hardwood lumber, Memphis to New Orleans. *Thompson Lumber Co. et al. v. Cent. R. R. Co. et al.* 657.

Hay, Kansas City to Cape Girardeau, Mo. *North Bros. v. St. L. & S. F. Ry. Co.* 152.

Iron pyrites, Baltimore to Detroit. *Detroit Chemical Works v. Nor. Cent. Ry. Co. et al.* 357.

Multigraphs, double first class under Western Classification. *Forest City Freight Bureau v. A., T. & S. F. Ry. Co. et al.* 295.

Stable manure, Washington to Glendale, Md. *White Water Farms v. P., B. & W. R. R. Co.* 526.

Sugar, New Orleans to Gallatin, Tenn. *Payne-Gardner Co. v. L. & N. Ry. Co.* 638.

Walnut lumber, Oklahoma City to Galveston for export. *Miller Walnut Co. v. A., T. & S. F. Ry. Co. et al.* 43.

Wire brushes and brooms, first class. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 109.

VALUE.

In determining the reasonableness of express rates but little reference is had to the value of the property employed, since the connection between value of the service and the cost of the property employed in rendering it is slight. *Kindel v. Adams Express Co. et al.* 475.

Affecting rates east and west. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Brushes per cubic foot. *Forest City Freight Bureau v. Ann Arbor R. R. Co. et al.* 109.

Charges may be graduated according to value. In re *Released Rates*, 55.

Relation to insurance. *Wyman, Partridge & Co. v. B. & M. R. R. et al.*

VEGETABLES.

Green Bay, Wis., to Washington, Ohio. *Larsen Canning Co. v. C. & N. W. Ry. Co. et al.* 286.

VESTED RIGHTS.

Location of station. *Eddleman et al. v. Mid. Val. R. R. Co.* 103.

VOLUME OF TRAFFIC.

Affecting rates. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Nebraska State Railway Commission v. U. P. R. R. Co. 349.

Raven Red Ash Coal Co. v. N. & W. Ry. Co. 230.

Reynolds v. Southern Express Co. 536.

Wyman, Partridge & Co. v. B. & M. R. R. et al. 258.

WAGON HAUL.

Interstate transportation by. *American Asphalt Asso. v. Uintah Ry. Co.* 196.

WATER COMPETITION.

Affecting import rates. *Pittsburg Plate Glass Co. v. P., C. & St. L. Ry. Co. et al.* 87.

Determining transcontinental rail rates. *Merchants' Traffic Assn. v. N. Y., N. H. & H. R. R. Co. et al.* 225.

Lake rates; influence on rates from Memphis difficult to see. *New Albany Furniture Co. v. M., J. & K. C. R. R. Co. et al.* 594.

Mississippi. *Payne-Gardner Co. v. L. & N. R. R. Co.* 638.

Profoundly influences rates from east of the Missouri River to the Pacific coast. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

WEAK LINES.

Defendant Fort Smith and Western Railroad is a comparatively new road which runs through a comparatively undeveloped territory. It has been operated at a loss each year, and has not sufficient equipment to warrant it in permitting its cars to go off its line with through shipments. It declares that it is and has been willing to establish through route and joint rates to Memphis if it could have divisions of such rates equal to its local rates and could secure cars for such shipments from connecting carriers. It has secured concurrence from two connecting carriers in joint tariff which provides for loading in connecting carriers' cars. *Memphis Freight Bureau v. Ft. S. & W. R. R. Co. et al.* 1.

Road constructed for special purpose. *American Asphalt Asso. v. Uintah Ry. Co.* 196.

Cedar Rapids & Iowa City Ry. & L. Co. v. C. & N. W. Ry. Co. 250.

WEIGHTS.

Defendant carrier ordered to desist and refrain from showing purported weights upon its billing until such weights shall have been ascertained either by weighing or by some fair method of computation from cubic contents. *Romona Oolitic Stone Co. v. Vandalla R. R. Co.* 115.

Decision of the Commission in the similar case of *Romona Oolitic Stone Company v. Vandalla R. R. Co.*, 13 I. C. C. Rep., 115, adhered to, and defendant carrier ordered to desist and refrain from showing purported weights upon its billing until such weights shall have been ascertained either by weighing or by some fair method of computation from cubic contents. *Romona Oolitic Stone Co. v. C., I. & L. Ry. Co.* 569.

Defendants' rule of assessing charges on the weight of bananas at point of origin instead of on the weight of the fruit at destination is not, under the circumstances of the case, unjust and unreasonable. *Topeka Banana Dealers' Asso. et al. v. St. L. & S. F. R. R. Co. et al.* 620.

Comparative, coal and coke. *Amarillo Gas Co. v. A., T. & S. F. Ry.* et al. 240.

Cream and ice in express packages. *Reynolds v. Southern Express Co.*

Error in billing. *White Waters Farms Co. v. P., B. & W. R. R. Co.* 526.

Estimated often permissible. *Ga. Rough & Cut Stone Co. v. Ga. R. R.* et al. 401.

Fish and ice for express shipments. *Bannon v. Southern Express Co.* 51

Forest lumber per 1,000 feet. *Burgess et al. v. Transcontinental Freight Bureau et al.* 668.

Hogs C. L. for single and double-deck cars. *Frye & Bruhn et al. v. N. P. Co.* et al. 501.

Stenciled on freight car less than actual. *Hydraulic Press Brick Co. St. L. & S. F. R. R. Co.* et al. 342.

WHARF FACILITIES.

Charges at New Orleans on bananas. *Topeka Banana Dealers' Assn. St. L. & S. F. R. R. Co.* et al. 620.

Michigan fruit. *Benton Transit Co. v. B. H.-St. J. Ry. & L. Co.* 542.

New Orleans. *Thompson Lumber Co. et al. v. Ill. Cent. R. R. Co.* et al. 65

WHEAT.

Rates on. *Banner Milling Co. v. N. Y. C. & H. R. R. Co.* 31.

Marshall Michel Grain Co. v. Mo. Pac. Ry. Co. 566.

Washburn-Crosby Co. v. Pa. R. R. Co. 40.

WIRE BRUSHES.

First-class unreasonable. *Forest City Freight Bureau v. Ann Arbor R. R.* et al. 109.

WIRE COAT HOOKS.

Rates on. *Forest City Freight Bureau v. Ann Arbor R. R. Co.* et al. 118.

WOOD.

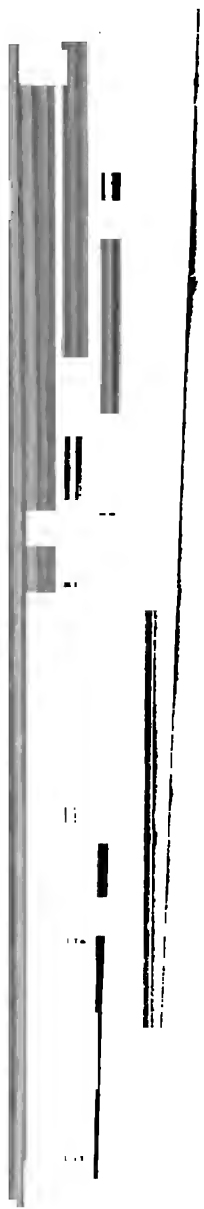
Rates on. *Wellington et al. v. St. L. & S. F. R. R. Co.* 534.

ZONE RATES.

Groups for Wyoming coal. *Nebraska State Railway Commission v. U. P. R. Co.* 349.







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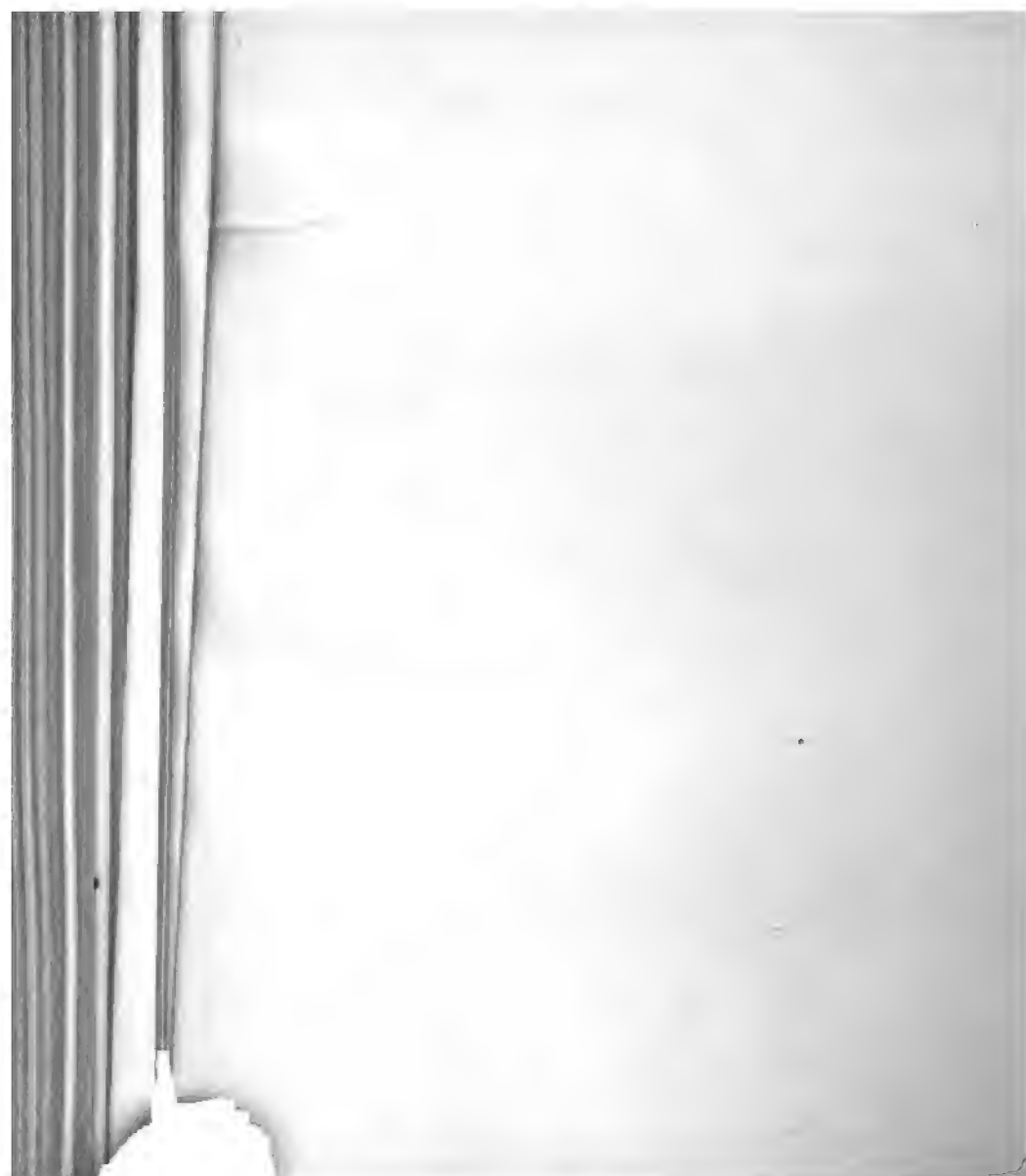
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